

A STUDY OF ADMINISTRATIVE CHILD SUPPORT PROCESSES

Submitted to:

*Wendy Yerkes
Deputy Director
Child Support Bureau
Department of Child Services
Indianapolis, IN*

Submitted by:

*Margaret Campbell Haynes, J.D.
Director, State and Local Government
Tier Technologies
Reston, VA*



August 15, 2007

Acknowledgments

Special appreciation is extended to John Bernhart, director of the Colorado child support program, William Castor, director of the Oregon child support program, Stephen Hussey, director of the Maine child support program, Alisha Key, director of the Texas child support program, Janal Luck, director of the Missouri child support program, John Mallonee, director of the Alaska child support program, Lonnie Olson, director of the Montana child support program, David Stillman, director of the Washington State child support program, Terry Walter, director of the South Dakota child support program, and Nick Young, director of the Virginia child support program, for identifying and authorizing people within their programs to participate in interviews. Thomas Mato, Chief Legal Counsel for the Florida child support program, provided a wealth of information regarding Florida's transition from a judicial process to one including more administrative processes, including a number of reports and studies prepared by the child support agency and state legislature. Appreciation is also extended to Sue Perry, director of the West Virginia child support program, and Policy Studies, Inc. for providing copies of reports they previously prepared on administrative process states.

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Executive Summary

The Indiana Child Support Bureau, a Division of the Indiana Department of Child Services, commissioned this white paper to study expedited child support processes, including best practices associated with quasi-administrative and administrative child support processes.

In a 2002 national study of administrative and judicial child support processes, Indiana was one of 10 states scoring “highly judicial.” Under a judicial model, the child support agency initiates legal action by filing pleadings with the court, hearing dates are set, the clerk of court coordinates service of process, parties file responsive pleadings, and a trial court conducts the hearing at which attorneys appear on behalf of the child support agency. In some Indiana counties, this process results in delays of up to nine months before a support order is issued. Other states use more administrative processes in which the child support agency is authorized to take certain actions, including the initiation of cases through administrative pleadings, which are not initially filed with the court, and the administrative entry of child support orders.

This white paper summarizes federal requirements for expedited processes, which a state must meet in order to receive federal funding for its child support program. It then compares Indiana’s child support process with that used in ten other states. These states include administrative process states, quasi-administrative states, and a judicial state that uses an administrative consent process. The paper concludes with options for supplementing Indiana’s judicial system with administrative processes in order to more quickly, yet fairly, process child support cases.

The paper is based on numerous sources of information. The initial sources were federal statutes and regulations, and prior studies on administrative and judicial processes. The most comprehensive study was one that the Lewin Group prepared for the federal Office of Child Support Enforcement in 2002. The other primary sources of information were interviews. County and state representatives of the Indiana child support agency provided information about the processing of child support cases by the local prosecutor offices and the courts. Interviews were also conducted with representatives identified by the child support directors in 10 states. These representatives described the administrative processes used in their states, identified the strengths and limitations of such processes, and recommended what they considered to be best practices. Finally, the interviews were supplemented with a review of state child support laws and agency regulations.

The paper has limitations. The individuals interviewed do not reflect all the stakeholders in that state’s child support process. Where state representatives provided information about case processing time, that information was not independently verified. Notwithstanding these limitations, the paper presents comprehensive information to guide an evaluation of Indiana’s current child support process, with the goal of improving the timeliness of orders and program performance.

Federal Background

Over the past 20 years, Congress has increasingly required a state to enact streamlined child support processes in order to receive federal funding. Since 1984, states have been required to have “expedited processes” for the establishment and enforcement of support awards. The term “expedited process” is defined in federal regulations. There is both a timeframe component, as well as a due process component. Noteworthy is the lack of specificity regarding the type of process; states can meet the expedited process requirement through either an administrative or judicial process.

To be considered an expedited process, action to establish a support order in a IV-D case must be completed (either by order establishment or dismissal of the action) within 6 months from service of process in 75 % of the IV-D cases needing support order establishment, and within 12 months in 90% of the cases.

The following safeguards must be present:

- Paternities and orders established by means other than full judicial process must have the same force and effect under State law as paternities and orders established by full judicial process within the State.
- The due process rights of the parties must be protected.
- The parties must be provided a copy of the voluntary acknowledgment of paternity, paternity determination, and/or support order.
- Action taken may be reviewed under the State's applicable administrative or judicial procedures.

The presiding officers must have authority to:

- Take testimony and establish a record;
- Evaluate evidence and make recommendations or decisions to establish paternity and to establish and enforce orders;
- Accept a voluntary acknowledgment of paternity or support liability and stipulated agreements setting the amount of support to be paid;
- Enter default orders upon a showing of proper service, the defendant's failure to respond to service, and any additional showing required by State law; and
- Order genetic tests in contested paternity cases.

More recently, Congress has required states, as a condition of receiving federal funding, to enact laws providing simple, civil procedures for paternity establishment, including the determination of paternity through a paternity acknowledgment without the necessity of further judicial action. It also has required numerous administrative enforcement measures, including the following:

- administrative subpoena power so that the IV-D agency can obtain financial or other information necessary to establish, modify, or enforce support
- access by the IV-D agency to information contained in certain state records, as well as certain private records

- administrative authority for the IV-D agency to increase the amount of an obligor's monthly payment, when necessary to satisfy an arrearage
- administrative authority to initiate income withholding
- administrative authority to impose liens arising by operation of law, and – in appropriate cases – to force the sale of property and distribute the proceeds to satisfy the child support obligation
- administrative authority to seize lump sums and financial institution accounts in order to enforce support.

The other federal legislation that has played a major impetus in states' consideration of more administrative processes is the Child Support Performance and Incentive Act of 1998. The legislation ties federal incentive dollars to the state agency's performance in five areas: paternity establishment, support establishment, current collections, arrearage collections, and cost-effectiveness.

Indiana Child Support Process

Indiana's IV-D agency, the Child Support Bureau (CSB), is housed within the Indiana Department of Child Services. It is state-run, county administered. According to unaudited data, at the end of federal fiscal year 2006, the Indiana child support agency had 355,757 open IV-D cases and 953 full-time equivalent staff (approximately 100 employed by the CSB, with the remainder employed by the 92 counties). The state agency provides centralized locate services and centralized enforcement work. The day-to-day provision of child support services is performed by 92 county elected prosecutors under cooperative agreements with CSB. There are also cooperative agreements with the elected county clerks for provision of record keeping services and limited payment processing services.

Indiana uses a judicial process to establish and enforce child support orders. In its 2002 report, Lewin defined any state that had a score of 14 or above on its taxonomy scale as "highly judicial." Indiana was one of 10 states scoring 16, the highest score.

In order to receive federal funding, the Indiana legislature has enacted expedited procedures for paternity establishment and administrative enforcement procedures. However, according to CSB Regional Field Consultants, it appears that some county prosecutors and many courts are nevertheless requiring use of judicial procedures for paternity establishment and enforcement.

For example, Indiana law authorizes paternity determination through an expedited civil process. If the mother and a man identified as the father sign a paternity affidavit meeting the requirements of IC-37-2-2.1, the paternity affidavit establishes paternity. The man is conclusively established as the legal father of the child without any further proceedings by a court. According to Regional Field Consultants, however, many courts are not treating paternity affidavits as legal determinations. In some counties, because of court practice, a prosecutor office cannot proceed with support establishment despite the existence of a signed acknowledgment; the deputy prosecutor must attach the paternity affidavit to a pleading to determine paternity. In still other counties, despite the existence

of a signed paternity acknowledgment, the court requires genetic testing. Both of these practices violate law requiring that a signed paternity acknowledgment conclusively establishes paternity without any further court proceedings.

Another example is income withholding, which is the withholding of money, usually from a person's wages, in order to meet the person's support obligation. In compliance with federal law, the Indiana legislature has authorized CSB to administratively enforce a support order by income withholding. However, based on reports from county field offices, in some counties judges require a judicial signature on every income withholding order that is sent to an employer. This practice, which is contrary to law, results in a delay in the initiation of income withholding.

Concerns

The Indiana child support program surpasses the national average for cost effectiveness; according to unaudited data, in FFY 2006 the agency collected \$8.92 for every \$1 spent. However, the program was below the national average in four of the five federal performance measures – paternity establishment, support establishment, current collections, and arrearage collections. These measures are the critical ones measuring whether support is reaching children. Of greatest concern is Indiana's performance in collecting current support: currently, Indiana collects only 54% of the dollars owed.

This white paper did not examine possible causes for the performance gap. However, in interviews with CSB Regional Field Consultants, there was consensus that the main impediment is the backlog of cases awaiting a hearing. In most counties, there is insufficient court time to handle the volume of IV-D cases. Some counties report that it can take from six to nine months to have a court hearing on child support.

Another major concern is the inability to use administrative or expedited methods that state law authorizes. As noted above, many courts are requiring a judicial determination of paternity or ordering genetic tests in cases where there is a signed paternity acknowledgment. Some county offices report that the courts in their counties require that an income withholding order go before the court for judicial signature. Such practices are contrary to law and delay support reaching children. The result is an aggravation of the first concern. By requiring judicial action in cases that could proceed administratively, there is less court time available for complex cases that need judicial review.

The centralized state child support office also voiced a concern about the variety of procedures among the county prosecutor's office.

Comparison of Administration and Judicial Processes

There is little research or data to support an argument that one type of legal system is better than another for the establishment of a support order. The federal Office of Child Support Enforcement recently commissioned a study to explore the key characteristics that define administrative and judicial processes, and to determine whether cases move more quickly through one process or another. The final report, Administrative and

Judicial Processes for Establishing Child Support Orders, was issued by the Lewin Group in June 2002.

The Lewin Group concluded that to classify a state as judicial or administrative was too one-dimensional. There is a great variety among states in how they process establishment cases, even among states that are primarily judicial or primarily administrative. In fact, few states use just one kind of process, and the process may differ depending upon whether there is consent or a contest. After an in-depth review of nine states, including site visits to five states representing various legal models, Lewin also concluded that program performance varies significantly within type of process (i.e., administrative, quasi-judicial, judicial) and between the types of processes. The bottom line – one cannot conclude that one type of process is more effective than another.

The findings from the Lewin study are consistent with the findings in this white paper. Interviews were conducted with six states classified by Lewin as “highly administrative” -- Alaska, Maine, Missouri, Montana, Oregon, and Virginia. Interviews were also conducted with three states that Lewin scored in the mid-range for administrative processes -- Colorado, South Dakota, and Washington. Finally, interviews were conducted with representatives of the Texas Office of the Attorney General, which operates the child support program in Texas. Although classified as a highly judicial state, Texas is an example of how administrative processes can be incorporated within a judicial environment. Based on the state interviews and statutory review, this white paper discovered variations both within particular legal systems, as well as between them.

A summary of each state interview is in the Appendix. Although there were variances within the “highly” administrative states studied, they shared these common characteristics:

- The agency has authority to initiate a legal action by serving an administrative notice.
- Legal documents to initiate the action (e.g., Notice and Finding of Financial Responsibility) do not require an attorney signature
- Legal pleadings are not initially filed with the court. The initial administrative notices are only required when they are part of the record for a court hearing (necessary in some states when there is no consent) or for any judicial review of the administrative decision.
- The child support agency, rather than the clerk of court, coordinates service of process.
- The child support agency has authority to issue administrative subpoenas and to require individuals, businesses, entities, etc. to provide certain information upon request.
- The child support agency has authority to enter consent orders.

- If there is no response to a Notice with a proposed support amount, an order may be entered based on the amount within the Notice.¹
- Administrative hearings are conducted by an executive branch decision-maker who must comply with state law and agency regulations.
- Child support agency attorneys do not usually participate in the administrative hearing. In most administrative states, caseworkers present evidence on behalf of the agency although they are not allowed to examine witnesses.
- At such administrative hearings, parties have the right to be represented by a lawyer. Relaxed rules of evidence apply. A record is made of the proceeding.
- Parties may request a judicial review of the administrative decision. This review is to a trial level court.
- The administrative support order is an enforceable order and does not require judicial ratification or approval.²

Although there were variances within the two quasi-administrative process states studied, they shared these common characteristics:

Features Similar to Judicial Process

- Contested cases are resolved by a quasi-judicial official, who is part of the judicial branch.
- A IV-D attorney, or attorney under contract or cooperative agreement, presents the case on behalf of the agency at the court hearing on a challenge.
- At the court hearing, rules of civil procedure, rules of evidence, etc. apply.

Features Similar to Administrative Process

- Legal documents to initiate the action (e.g., Notice and Finding of Financial Responsibility) do not require an attorney signature
- Legal pleadings are not initially filed with the court. The initial administrative notices are only required when they are part of the record for a court hearing (necessary in some states when there is no consent) or for any judicial review of the administrative decision.
- The child support agency, rather than the clerk of court, coordinates service of process.
- The child support agency has authority to issue administrative subpoenas and to require individuals, businesses, entities, etc. to provide certain information upon request.

¹ In most of the administrative states studied, the agency has authority to enter such orders. In Montana, the agency prepares the default order but it must be signed by an administrative law judge.

² Several administrative states contacted for this paper docket the administrative order with the court in order for it to be fully enforceable by judicial remedies. Montana requires judicial approval of an administrative order that proposes a modification to a court order.

Texas, representing a judicial state similar to Indiana, had these characteristics:

Features Similar to Judicial Process

- The child support agency does not have authority to enter a consent order. Where there is an agreed order, the parties waive service and the agreement is filed with the court for court approval. However, by statute, the court must approve the order.
- The child support agency does not have authority to enter a default order. However, when the agency submits a Petition for Confirmation of a Non-Agreed Child Support Review Order to the court, the law requires the court to sign the submitted proposed non-agreed order if the non-agreed order is not contested after notice by the clerk; the court's approval is not discretionary.
- In a contested case, the clerk of court coordinates service of process.
- Contested cases are resolved by an associate judge
- An agency attorney appears on behalf of the agency at the contested court hearing.

Features Similar to Administrative Process

- Legal documents to initiate the action (i.e., Notice of Child Support Review) do not require an attorney signature.
- Legal pleadings are not initially filed with the court. Where court approval or action is needed, the agency can initiate the court process by filing the initial administrative notices with the court.
- The child support agency attempts to obtain a consent order.
- The child support agency has authority to issue administrative subpoenas and to require individuals, businesses, entities, etc. to provide certain information upon request.

Next, we looked at program performance. Again, the findings of this paper, based on 2006 federal performance measure scores, is consistent with Lewin's conclusion based on 1999 and 2000 data: There is insufficient evidence to say that one type of legal system is more effective than another.

	Paternity Performance³	Support Order Establishment	Current Collections	Arrearage Collections	Cost Effectiveness
Judicial					
Indiana	86.2% IV-D	68.4%	53.8%	58.8%	\$ 8.92
Judicial with Admin					
Texas	92.96% Statewide	82.7%	62.3%	67.3%	7.53
Quasi-Admin.					
Colorado	92.99% Statewide	86.3%	59.1%	67.3%	3.94
South Dakota	108.68% IV-D	93.0%	62.3%	68.5%	8.23
Administrative					
Alaska	97.95% Statewide	92.2%	54.9%	66.5%	4.27
Maine	96.3% IV-D	87.7%	61.1%	55.0%	4.16
Missouri	92.9% Statewide	82.8%	55.7%	53.4%	5.58
Montana	108.7% IV-D	88.0%	61.5%	65.4%	4.19
Oregon	92.1% Statewide	66.4%	60.4%	62.5%	5.86
Virginia	91.7% Statewide	85.2%	61.6%	58.1%	6.58
Washington	100.2% IV-D	89.9%	64.3%	67.3%	4.41
National Average	89.8% IV-D 97.9 Statewide	77.3%	60.3%	60.8%	4.58

Figure 1: Performance Measure Results for 2006

Of the states studied for this report, the only state that scored above the national average in FY 2006 in each of the five federal performance measures was South Dakota, a quasi-administrative state. Three states exceeded the national average in four of the performance measures: Texas (judicial with administrative), Montana (administrative), and Washington (administrative). Four states met or exceeded the national average in three of the performance measures: Alaska (administrative), Maine (administrative),

³ States have discretion in how they calculate the paternity establishment percentage (PEP). They can use a IV-D formula, based on children in the IV-D caseload who were born out-of-wedlock, or a statewide formula, based on children in the state born out-of-wedlock.

Oregon (administrative), and Virginia (administrative). Two states scored below the national average in three performance measures: Colorado (quasi-administrative) and Missouri (administrative). Only one state scored below the national average in four of the five performance measures: Indiana (judicial).

Options for Consideration

Now may be an appropriate time to identify systemic changes that would improve the processing of child support cases in Indiana. As noted above, the Indiana child support program is below the national average in four out of five critical performance measures. It appears that courts in some counties have adopted practices contrary to federal and state requirements. The backlog in some counties for a court hearing date is six to nine months. There is no uniformity in how county prosecutor offices process cases.

If Indiana is not satisfied with the current performance of its Child Support Program, several options for consideration emerge from this study.

Evaluate Existing Procedures for Processing IV-D Cases

- Conduct a study of the variances among county prosecutor offices regarding paternity establishment, support establishment, enforcement, and modification of support.
- Conduct a study of the judicial processes used to establish paternity, establish support, enforce support, and modify support.

Find Ways to More Effectively Implement Existing Laws

- Convene a multi-disciplinary workgroup to identify and resolve barriers to implementing existing administrative processes.
- Provide education programs to the judiciary, deputy prosecutors, and agency caseworkers.

Conduct a Pilot

- Consider legislative authorization of a pilot study in one or more counties to determine whether incorporating more administrative processes into the resolution of child support cases, especially the establishment of a support order, would improve the delivery of services to parents and result in money reaching children faster.

Include in the pilot project the following considerations:

- Address various services that the child support agency provides – paternity establishment, support establishment, review and adjustment, and enforcement.
- Decide upon key elements that make a process either more judicial or more administrative.
 - The authority of the agency
 - The decision-maker
 - The level of personal contact between parents and the agency
 - Forms and service of process
 - The authority of a caseworker
 - Time period for response
 - Use of default orders

- Ability to reopen or set aside a default order
- Challenge process
- Format for a contest
- Review process
- Jurisdiction over nonresidents

Implement More Administrative Processes, without a Pilot

- Augment judicial resources by expanding the administrative hearing process, already available in certain child support enforcement actions, to include support establishment. In developing administrative procedures for support establishment, consider authorizing the child support agency to
 - Administratively initiate an action by serving parties with an administrative notice.
 - Seek agreement between the parties to the support guideline amount through a negotiation conference.
 - Administratively issue agreed upon support orders.
 - Administratively issue a support order, based on a prior notice, when the parties do not timely respond to the notice by contesting the proposed support amount.
 - Resolve contested support cases through an administrative hearing, with the parties retaining the right to seek judicial review of the administrative decision.

In Conclusion

This white paper summarizes a variety of approaches that states have taken to handle child support cases in a streamlined manner. Should Indiana decide to enact more administrative child support processes, the states studied for this white paper offer models from a “pure” administrative approach to a judicial approach that incorporates an administrative consent process. Amidst the variances, there are also common elements. All of the states studied, including the judicial state of Texas, have developed establishment processes in which:

- The child support agency has authority to administratively initiate an action.
- Legal documents to initiate the action (i.e., Notice of Child Support Review) do not require an attorney signature.
- Legal pleadings are not initially filed with the court. The initial administrative notices are only required when they are part of the record for a court hearing (necessary in some states when there is no consent) or for any judicial review of the administrative decision.
- The child support agency has authority to seek agreement to a proposed support amount based on child support guidelines, either expressly through negotiation or implied through the lack of a response to a proposed support amount. The variances among the studied states are whether the agency has authority to enter a consent order or default order, or whether such orders require signature by an administrative or judicial officer.

- The child support agency has authority to issue administrative subpoenas and to require individuals, businesses, entities, etc. to provide certain information upon request.

The most critical element common to all models is due process. Each state ensures that parties receive notice, have an opportunity to challenge agency action, and can seek review by a court. Agency representatives stressed the importance of providing these due process protections. States also invest time to ensure that stakeholders – the court, parents, caseworkers, prosecuting attorneys, and the private bar -- understand these protections.

The information and suggestions presented in this paper are meant to generate discussion among the stakeholders in Indiana's child support program. Once there is consensus on where improvements are needed, the legislature can decide what approaches may be most appropriate for Indiana.

A Study of Administrative Child Support Processes

I. Scope of Work

In 2002 the Lewin Group completed a study of administrative and judicial child support processes, under contract with the federal Office of Child Support Enforcement.¹ As part of that study, Lewin developed a taxonomy of child support order establishment processes, which it used to characterize each of the 50 states and the District of Columbia. For the purpose of the study, Lewin defined any state that had a score of 14 or above as “highly judicial.” Indiana scored a 16. It was one of 10 states receiving that score, which was the highest score received.

Indiana’s child support system relies heavily on the use of prosecutors and the courts for all aspects of child support, including paternity establishment, establishment of support (including medical support), enforcement, and modification. Research by the Indiana Child Support Program reveals long delays in many counties between initiation of a support action and establishment of a judicial order; much of the delay is due to overburdened courts that lack adequate court time for the ever increasing child support caseload. The result is a delay in support payment reaching children who depend upon it for financial stability.

In order to learn more about how to improve the delivery of support services to children, the Indiana Child Support Bureau, a Division of the Indiana Department of Child Services, commissioned this white paper to study expedited child support processes, including best practices associated with quasi-administrative and administrative child support processes. Based on interviews and a review of state statutes and administrative codes, the paper summarizes the child support procedures used in Indiana as compared to the administrative procedures used in ten other states. The paper identifies possible ways to supplement the current judicial process, with the goals of improving the speed and efficiency with which Indiana children receive financial support while ensuring the due process rights of all parties involved. The paper concludes with a list of best practices and recommendations based on other states’ experiences.

II. Background

Definitions

A judicial process is a legal system in which a judge makes decisions on various legal issues. The judge takes testimony, examines evidence, makes findings of fact, and enters conclusions of law. A judge’s order is final unless appealed to an appellate court.

An expedited judicial process is a legal system in which judge surrogates make legal decisions. States use different names to refer to these judge surrogates, e.g., referee, master, magistrate, commissioner, hearing officer. The judge surrogate also takes testimony, examines evidence, and makes findings of fact. In some jurisdictions, an order issued by a judge surrogate is final unless appealed to a trial court. In other

jurisdictions, a judge surrogate may enter an order, which must be approved by the trial court.²

An administrative process is a legal system that is created by statute, authorizing an administrative agency to take certain action. Usually the legislature gives the agency authority to promulgate rules and regulations to further define its processes. The decision-maker in an administrative process may be an employee of the agency or may be an administrative law judge or hearing officer employed by a separate agency. The decision-maker is in the executive branch, rather than the judicial branch. There may be several levels of review in an administrative process with varying degrees of formality. An administrative law judge or hearing officer also takes testimony, examines evidence, and makes findings of fact. In most jurisdictions, an administrative order is final unless a party requests judicial review. In some jurisdictions, the ALJ or hearing officer may enter an order, which must be filed with, or approved by, the court in order to be effective.

Federal Legislation

Historically family law was within the domain of States. However, as the number of families receiving public assistance grew dramatically, Congress in the mid to late 1960's began to enact federal laws related to child support. In 1975 Congress created the Title IV-D program.³ So-named because of its location in Title IV-D of the Social Security Act, this program provides locate, paternity, establishment, enforcement, and modification services to families. At the federal level there is the federal Office of Child Support Enforcement (OCSE). This agency has administrative, regulatory, and technical assistance responsibilities over the child support program. It also manages the expanded Federal Locator Service, which includes the National Directory of New Hires and the National Case Registry. State child support programs have the daily operational responsibilities.

Since 1975 Congress has enacted a number of major initiatives requiring States to enact certain child support laws in order to receive federal funding. The laws are usually based upon best practices that originated at the state level, such as child support guidelines, income withholding, and new hire reporting. The Child Support Enforcement Amendments of 1984⁴ were the first to address the legal systems that States use to establish and enforce child support orders. The Amendments required States to enact statutes providing for the use of expedited processes, as a condition of receiving federal funds.⁵ The expedited processes had to be available for the establishment and enforcement of support obligations. The decision to use expedited processes for paternity establishment was left to the discretion of the States.

Implementing federal regulations initially defined expedited processes as “administrative or expedited judicial processes or both which meet specified processing times and under which the presiding officer is not a judge of the court.”⁶ The regulation was amended in 1994 to delete the requirement that the presiding officer not be a judge. The regulation now defines expedited processes as “administrative and judicial procedures (including IV-D agency procedures) required under section 466 (a) (2) and (c) of the [Social

Security] Act.” States therefore have discretion in the type of legal systems they use to process child support cases.

More importantly, the regulation defines expedited processes in terms of timeframes:

(2) Under expedited processes:

(i) In IV-D cases needing support order establishment, regardless of whether paternity has been established, action to establish support orders must be completed from the date of service of process to the time of disposition within the following timeframes: (A) 75 percent in 6 months; and (B) 90 percent in 12 months.

(ii) In IV-D cases where a support order has been established, actions to enforce the support order must be taken within the timeframes specified in §§303.6(c)(2) and 303.100;

(iii) For purposes of the timeframe at §303.101(b)(2)(i), in cases where the IV-D agency uses long-arm jurisdiction and disposition occurs within 12 months of service of process on the alleged father or noncustodial parent, the case may be counted as a success within the 6 month tier of the timeframe, regardless of when disposition occurs in the 12 month period following service of process.

(iv) Disposition, as used in paragraphs (b)(2)(i) and (iii) of this section, means the date on which a support order is officially established and/or recorded or the action is dismissed.

In addition to establishing timeframes for various actions, the regulation details procedural protections:

(c) *Safeguards.* Under expedited processes:

(1) Paternities and orders established by means other than full judicial process must have the same force and effect under State law as paternities and orders established by full judicial process within the State;

(2) The due process rights of the parties involved must be protected;

(3) The parties must be provided a copy of the voluntary acknowledgment of paternity, paternity determination, and/or support order;

(4) Action taken may be reviewed under the State's generally applicable administrative or judicial procedures.

The regulation also mandates minimum functions that the presiding officers, whatever they may be called, must provide:

(d) *Functions.* The functions performed by presiding officers under expedited processes must include at minimum:

(1) Taking testimony and establishing a record;

(2) Evaluating evidence and making recommendations or decisions to establish paternity and to establish and enforce orders;

(3) Accepting voluntary acknowledgment of paternity or support liability and stipulated agreements setting the amount of support to be paid;

(4) Entering default orders upon a showing that process has been served on the defendant in accordance with State law, that the defendant failed to respond to service in accordance with State procedures, and any additional showing required by State law; and

(5) Ordering genetic tests in contested paternity cases in accordance with §303.5(d)(1).

In order to demonstrate that the concern is outcome, not label, the regulation provides that a State may request an exemption from any of the requirements of the expedited process regulation for a political subdivision on the basis of the effectiveness and timeliness of paternity establishment, support order issuance, or enforcement within the political subdivision in accordance with the required state IV-D laws.

Subsequent federal legislation has expanded the authority of child support agencies. The Family Support Act of 1988⁷ required States to establish review and adjustment procedures for IV-D cases, in order to receive federal funding. State IV-D agencies were required to notify each parent subject to an order being enforced by the agency that the parent could request a review of the order at least once every three years. Upon receiving a request, the agency was required to notify the parties at least 30 days prior to the review, and notify the parties of any proposed adjustment or determination that there should be no change to the order. The procedures had to provide the parents at least 30 days for a challenge.⁸ Implementing federal regulations define “review” as “an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State’s guidelines.”⁹

The Omnibus Reconciliation Act of 1993¹⁰ required States, as a condition of receiving federal funds, to adopt laws requiring civil procedures to voluntarily acknowledge paternity, including the implementation of in-hospital acknowledgment programs.¹¹ In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).¹² Promoted as legislation that dramatically overhauled the country’s welfare program, it also dramatically changed the face of the child support program. Included within its requirements were the following:

- streamlined paternity establishment, including use of a voluntary paternity acknowledgment¹³
- administrative authority for the child support agency to order genetic testing for paternity establishment in contested cases¹⁴
- administrative subpoena power so that the IV-D agency can obtain financial or other information necessary to establish, modify, or enforce support¹⁵
- access by the IV-D agency to information contained in certain state records, as well as certain private records¹⁶
- administrative authority for the IV-D agency to change the payee to the proper government agency¹⁷

- administrative authority for the IV-D agency to increase the amount of an obligor's monthly payment, when necessary to satisfy an arrearage¹⁸
- administrative authority to initiate income withholding¹⁹
- administrative authority to impose liens arising by operation of law, and – in appropriate cases – to force the sale of property and distribute the proceeds to satisfy the child support obligation²⁰
- administrative authority to seize lump sums and financial institution accounts in order to enforce support.²¹

The Child Support Performance and Incentive Act of 1998²² has also impacted the type of legal systems that States use to establish and enforce child support obligations in IV-D cases. The legislation ties federal incentive dollars to the state agency's performance in five areas: paternity establishment, support establishment, current collections, arrearage collections, and cost-effectiveness.²³ In order to ensure that the state agency's performance in each measure meets certain benchmarks, States are evaluating how they can make their child support programs more efficient and effective.

Comparative Studies on Performance

Although the Child Support Enforcement Amendments of 1984 required States to have “expedited processes” to establish and enforce child support obligations in Title IV-D cases, that does not mean a State must use an administrative process. At the time of the Amendments, States already had a variety of legal systems for processing child support cases. Some States, such as Maine and Washington, were using administrative processes that dated back to the creation of the Title IV-D program. Other States were using judicial or quasi-judicial systems. In response to the expedited process requirement, States that had traditionally been judicial began to explore quasi-judicial systems and administrative processes. The shift from a pure judicial system to one incorporating more administrative processes was dramatic after PRWORA. For the first time, Congress expressed a clear preference for administrative processes, at least with regard to enforcement. The question remains open, however, with regard to establishment.

There is little research or data to support an argument that one type of system is better than another for the establishment of a support order.²⁴ Proponents of the judicial and quasi-judicial processes believe that the judiciary can best protect parties' due process rights. They also note that the court has equity powers, and that some enforcement remedies -- such as contempt and incarceration for nonsupport -- are only available judicially. Proponents of administrative processes respond that parties' due process rights are fully protected in an administrative system and that there is always a right to judicial review. They note that the administrative process can result in the faster establishment of a support order because there is no requirement to file pleadings and no delay while waiting for a court date. They believe that the process provides more access to parents because of the various opportunities for consent and the ability to participate without the expense of a lawyer.

The federal Office of Child Support Enforcement commissioned a study to explore the key characteristics that define administrative and judicial processes, and to determine

whether cases move more quickly through one process or another. The final report, *Administrative and Judicial Processes for Establishing Child Support Orders*²⁵, was issued June 2002. The Lewin Group conducted the study in three phases. First, it developed a taxonomy to classify states along a continuum of administrative and judicial processes. States were “scored” on a number of criteria, such as the type of forum, the type of presiding officer, the use of consent orders, the type of process used for contested and uncontested orders, and attorney involvement in the process. For each criteria, Lewin assigned points. The more points a State received, the more judicial that State was classified.²⁶ A caveat: Lewin did not classify states based on a review of primary sources, such as current state statutes and administrative codes. Rather, it relied upon responses to a 1997 CLASP survey of state IV-D directors supplemented with information from other studies.²⁷ After completing a draft of the taxonomy, Lewin shared it with the State IV-D directors to solicit feedback.²⁸ For the purpose of its study, Lewin defined any state with a taxonomy score of 14 or above as “highly judicial” and any state with a score under 10 as “highly administrative.” The results of the taxonomy scores appear below.

Taxonomy Spectrum

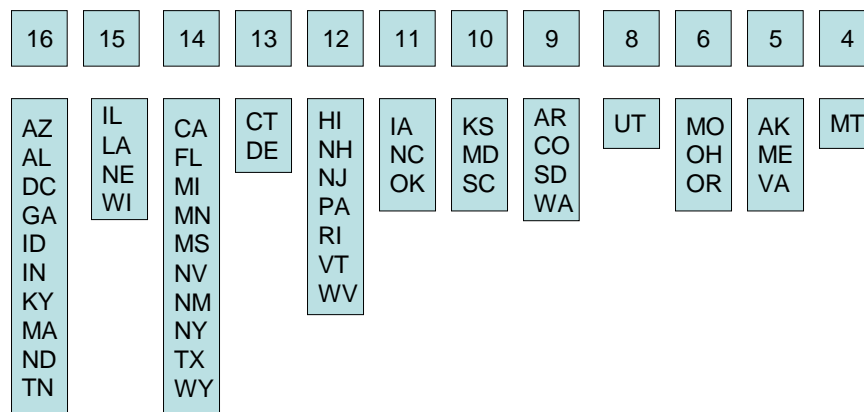


Figure 2: Taxonomy Scores Relative to Administrative and Judicial Processes

Based on the assessments, the Lewin Group selected nine states for an in-depth review. The States included administrative process, judicial process, and quasi-judicial process states. The review included an examination of various documents provided by the nine state agencies, including policy manuals, flow charts, training materials, applications, guidelines, program brochures, and program performance across the five federal performance measures.²⁹ The authors then made site visits to five of the nine states: two states were classified as highly judicial (Arizona and Massachusetts), two were classified as highly administrative (Maine and Oregon), and one was classified as quasi-judicial (Colorado). In each state, the authors used interview protocols to collect information

from state-level officials, local office caseworkers, district or county administrators, and court officials. They also reviewed a sample of cases to determine the length of time between case opening and order establishment.

The report's findings are quite interesting. The Lewin Group concluded that to classify a state as judicial or administrative is too one-dimensional: "The project activities revealed nuances that render the simple administrative/judicial labels overly simplistic." They found a great variety among States in how they process establishment cases, even among States that are primarily judicial or primarily administrative. In fact, few States use just one kind of process, and the process may differ depending upon whether there is consent or a contest. In terms of establishment milestones, however, Lewin did discover some areas where there were noticeable differences between the nine judicial and administrative process states studied in depth:

- All three of the judicial states and both quasi-judicial states relied primarily on in-person service, while the four administrative states were more likely to use certified mail, return receipt requested.
- The four administrative states informed the noncustodial parent of the proposed order amount early in the process. The three judicial states revealed the order amount on the court date. The two quasi-judicial states were mixed.
- Caseworkers in the four administrative states had more discretion to deviate from the guideline amount than caseworkers in the five judicial and quasi-judicial states.
- Attorneys were involved in all aspects of order establishment in the three judicial states and rarely involved in the four administrative states. In the two quasi-judicial states, they handled court-related business.
- The three judicial states had some mechanism for meeting with one or both of the parents, but none of the four administrative states did. The two quasi-judicial states were mixed.³⁰

With regard to performance, the report noted the following:

- Among the nine states we reviewed in-depth, program performance across the key measures varied significantly both within type of process (i.e., administrative, quasi-judicial, judicial) and between the types of processes. However, we found no systematic pattern with regard to the effectiveness of any type of process.
- Among the five states we visited, our review of administrative data found that four of the states (the two administrative and two judicial states) had comparable establishment time frames [sic], the quasi-judicial state had a shorter timeframe.³¹

In conclusion, Lewin identified areas for further study:

Is there a relationship between the child support order establishment process and measures of program effectiveness?

Are higher default order rates related to forum or other features of the establishment process?

Does a state's method for imputing income contribute to its default order rate?

Do states with in-person meetings have better compliance with child support order payments?

Would county- or office-level experiments reveal information about effective practices independent of forum?

Does the timing of the disclosure of the order amount affect contests?

Do links to the courts improve parental responses to the order establishment process?

Can the clarity of notices and orders improve compliance with the establishment process?

III. Current Indiana Process

Indiana's IV-D agency, the Child Support Bureau (CSB), is housed within the Indiana Department of Child Services. It is state-run, county administered. The state agency provides centralized locate services and centralized enforcement work. The day-to-day provision of child support services is performed by 92 county elected prosecutors under cooperative agreements with CSB. There are also cooperative agreements with the elected county clerks for provision of record keeping services and limited payment processing services.

In federal fiscal year 2006, according to unaudited data, the Indiana child support agency had 355,757 open IV-D cases and 953 full-time equivalent employees (approximately 100 employed by the CSB, with the remainder employed by the 92 counties). That year Indiana scored above the national average on one of the five federal performance measures (cost-effectiveness). The state was lower than the national average in four of the five performance measures (paternity, support order establishment, current collections, and arrearage collections).

In its 2002 report, Lewin defined any state that had a score of 14 or above on its taxonomy scale as "highly judicial." Indiana scored a 16.

In order to receive federal funding, the Indiana legislature has enacted various child support laws required by federal legislation. These laws include expedited procedures for paternity establishment and administrative enforcement procedures. Indiana law also provides for paternity establishment and enforcement through the court system. According to CSB Regional Field Consultants, it appears that, despite the availability of administrative procedures, some county prosecutors and many courts are requiring use of judicial procedures. This has exacerbated the backlog of cases waiting for court hearings. Some counties are reporting a wait of up to nine months.

Paternity Establishment

Indiana law authorizing paternity determination through an expedited civil process is at Indiana Code (IC) 16-37-2-1 through 16-37-16 and IC 31-14-7-1 through 31-14-7-3. If the mother and a man identified as the father sign a paternity affidavit meeting the

requirements of IC-37-2-2.1, the paternity affidavit establishes paternity. The man is conclusively established as the legal father of the child without any further proceedings by a court. According to regional field consultants, however, many courts are not treating paternity affidavits as legal determinations.

In a few counties, if a county prosecutor office opens a support case where the parties have already signed a paternity affidavit, the office will attach a copy of the affidavit to the pleadings and proceed with support establishment. Such a practice is consistent with federal and state law. However, in some counties, because of court practice, the prosecutor's office attaches the paternity affidavit to a pleading to determine paternity. In still other counties, despite the existence of a signed paternity acknowledgment, the court requires genetic testing. Both of these latter practices violate law requiring that a signed paternity acknowledgment conclusively establishes paternity without any further court proceedings.³²

If there is no paternity affidavit, some county offices attempt to reach agreement between the parties prior to filing a court action. In these counties, the office schedules a conference with both parties, who are told to bring financial information. A caseworker meets with the parties. The caseworker explains the paternity establishment process, and the parents' rights and responsibilities. Based on the parties' financial information, the caseworker will also compute the guideline support amount. The caseworker, who is trained on use of the guideline worksheet, can factor in a permissible guideline deviation but it is subject to review and approval by a prosecuting attorney. If the parents agree to all issues – paternity, health care, support, the child's last name, and visitation rights – the prosecutor's office (usually a caseworker) will prepare a stipulated agreement. The agreement, which the parents must sign before a notary, contains provisions by which the father acknowledges paternity and agrees to the guideline amount of support. The parties usually waive service of a summons when they sign the agreement. The paperwork is reviewed by a IV-D deputy prosecutor, who must approve and sign off on the agreement. The caseworker then prepares the necessary pleadings to present the stipulated agreement to the court. In most counties using the consent process, the pleading and agreement are filed with the court, and the court approves the agreement without the necessity of a court hearing. The parties receive a copy of the court approved agreement by regular mail.

If there is no affidavit and no stipulated agreement, the prosecutor's office must file a petition in the court to establish paternity. The counties vary regarding the next steps. In most counties, a caseworker prepares a summons, which is usually personally served on the alleged father by a sheriff, investigator, or private contractor. The summons includes a copy of the paternity petition and informs the alleged father of the court date. (Usually the custodial parent has waived service when she signs the paternity pleadings.)

The paternity hearing is before a court. Some counties have a court dedicated to hearing IV-D cases; others do not. Parties may be represented by counsel. A deputy prosecuting attorney appears on behalf of the child support agency. If the alleged father requests genetic testing, the court orders the testing. The request usually triggers a court continuance. According to county reports, the rescheduled hearing may take place from

30 days to nine months later. If the genetic test results indicate a 99% probability of paternity, the man is presumed to be the child's biological father. The presumption is part of the evidence the court will consider at trial. Once the court issues its decision, any party wishing to appeal must file a motion with the Court of Appeals. Any appeal must be filed within 30 days of the court decision.

If the alleged father fails to appear at the paternity hearing, some courts will issue a default order establishing paternity if there was personal service.

Support Establishment

Support establishment must occur through the courts. If paternity is not at issue because the children were born during a marriage or because paternity has already been judicially determined, the county prosecutor office will seek financial information from both parties. In some county prosecutor offices, the custodial parent who has applied for IV-D services is told to bring in recent pay stubs, W2 forms, day care receipts, and any information the custodial parent has about the noncustodial parent's income. If both parents come to the office, a caseworker will review their income information and use an establishment worksheet to calculate the guideline amount. The caseworker usually relies on information presented by the parties. If the parents agree to a support amount, the caseworker will prepare a stipulated agreement, and provide the agreement and financial information to a deputy prosecuting attorney for review and approval. If the parties have agreed to a deviation from the guideline amount and there is a permissible deviation factor present, the deputy prosecuting attorney can accept the agreement. A caseworker prepares the necessary pleadings to present the stipulated agreement to the court. In some counties, the court will approve the agreement without a hearing.

Other county offices include within the summons to appear at a scheduled court hearing the requirement that the noncustodial parent provide the county prosecutors office with income information within a set time period. In other counties, the office sends the noncustodial parent a letter (as opposed to a summons) requesting financial information. If the parent does not provide the information, the office schedules a court hearing.

If there is no agreement, the prosecutor attorney's office must file a petition in the court to establish a support obligation. The counties vary regarding service of the pleadings and notification of the court date. At the court hearing, parties may be represented by counsel. A deputy prosecuting attorney appears on behalf of the child support agency. Based on the evidence presented and the child support guidelines, the court will issue a decision establishing the support amount. Any party wishing to appeal must file a motion with the Court of Appeals. Any appeal must be filed within 30 days of the court decision.

If the noncustodial parent fails to appear at the support hearing after personal service, some courts will issue a default order establishing the support obligation based on the evidence presented by the agency.

Review and Adjustment/Modification

Indiana law allows modification of a support order if there are “changed circumstances so substantial and continuing as to make the terms unreasonable;” or if applying the guidelines would result in more than a 20% change from the current amount and the current order was issued at least 12 months before the petition requesting a modification was filed.

In response to notification of their right to request a review, sometimes both parties appear at the county prosecutor’s office, provide financial information to the agency, and sign a stipulated agreement based on the new guideline amount. A caseworker prepares the necessary pleadings to present the stipulated agreement to the court. In some counties the court will signify its approval of the agreement by signing the agreement without a court hearing.

The county offices vary in how they process requests for review by a custodial parent or noncustodial parent, where there is no agreement. If the custodial parent requests a review, some counties require the parent to provide sufficient income information about the noncustodial parent so that the office can determine whether the modification threshold has been met; the county office does not supplement information presented by the custodial parent with information from data interfaces. Some county offices issue third party production requests to gather more income information. If the office determines, after conducting its internal review, that there is the modification threshold is met, the deputy prosecuting attorney files a petition to modify in the court. If the office determines that there is no basis for modification, the office sends the custodial parent a letter notifying the parent of the review results. There is no process for the parent to challenge that decision. If the custodial parent wishes to proceed, the parent must proceed *pro se* or through private counsel to file a modification action in court.

It appears that, by practice, most county prosecutor offices limit requests for review by a noncustodial parent to requests within a certain time period, e.g., once every three years or a year after issuance of the current order. Unlike custodial parents, the offices do not allow a noncustodial parent to seek a review based on changed circumstances. If the noncustodial parent requests a review, the office mails the custodial parent a letter notifying the parent of the request and directing the parent to send the office financial information. If the custodial parent does not respond by submitting information, the office terminates the review. There is no attempt to compel the custodial parent’s production of financial information. If the noncustodial parent wishes to proceed with a modification, he or she must proceed *pro se* or through private counsel to file a modification action in court.

In other counties, if the noncustodial parent requests a review, the office sends a financial packet to the parent. When the noncustodial parent completes the form, the office sends the completed form to the custodial parent and requests that the custodial parent also provide financial information. If the custodial parent returns a completed form, the office conducts a review of the current order based on the parties’ current financial situation. If it appears that a modification is warranted, the office provides the guideline worksheet

and a *pro se* packet to the noncustodial parent. The parent must proceed *pro se* or through private counsel to file a modification action in court.

Enforcement

As noted earlier, federal law requires a state to authorize its support agency to initiate certain administrative enforcement actions, if the state wants to receive federal funds. Indiana has given the Child Support Bureau such administrative authority. By statute, the Child Support Bureau can administratively enforce a support order by income withholding, license suspension, credit bureau reporting, imposition of a lien, and seizure of lump sum payments. However, based on reports from county field offices, in some counties judges require a judicial signature on every income withholding order that is sent to an employer. This practice, which is contrary to law, results in a delay in the initiation of income withholding.

With license suspension and activation of an income withholding, the obligor receives a Notice of Intent that specifies the amount of delinquency and informs the obligor that the particular enforcement will take place unless the obligor takes certain action within a prescribed time period. The obligor may file an appeal with the agency within 20 days after the date the notice was issued. If the obligor timely files a written appeal, the agency conducts an administrative hearing. The hearing is conducted in person in Indianapolis. The administrative hearing judge (ALJ) is appointed by the director of the Division of Family and Children, which is a separate agency from the Department of Child Services. The ALJ conducts the hearing in an informal manner and does not have to follow the technical rules of evidence. The parties can be represented by counsel. The deputy prosecuting attorney sends relevant exhibits to Indianapolis and a staff attorney for the Department of Child Services presents the case on behalf of the child support agency. A record is made of the proceeding. After considering the evidence, the ALJ issues a decision. The decision must contain findings of fact, specify the reasons for the decision, and identify the evidence and law supporting the decision. The administrative decision is final unless a party requests an agency review. A party must file such a request within 10 days of receiving the ALJ decision.

Any agency review is conducted by the director of the Division of Family and Children or the director's designee. The review is on the record of the ALJ proceeding, although parties may submit a Memorandum of Law. Following the review, the director or designee issues a written decision. That decision may affirm the ALJ decision, amend or modify it, reverse it, remand the decision for the ALJ to take further specified action, or make other orders as appropriate on the record. The director provides a copy of the agency review decision to the parties and the ALJ.

If a party is not satisfied with the agency review, the party may file a petition to the trial court for judicial review. A deputy prosecuting attorney appears on behalf of the agency at any court hearing.

Indiana law also provides that the child support agency may administratively establish a lien on a bank account by sending the obligor a notice informing the individual that his or

her account is subject to a child support lien, and that the individual may file an appeal with the agency within 20 days after the date the notice was issued. If the obligor timely files a written appeal, the agency conducts a hearing under 470 IAC 1-4, which is the process described above. Based on reports from regional field offices, it appears that many prosecuting offices do not use this remedy. Rather, the office proceeds through the judicial process to establish a lien and levy on a bank account.

Concerns

The Indiana child support program surpasses the national average for cost effectiveness; according to unaudited data, in FFY 2006 the agency collected \$8.92 for every \$1 spent. However, the program did not meet the national average in four of the five federal performance measures – paternity establishment, support establishment, current collections, and arrearage collections. These measures are the critical ones measuring whether support is reaching children. Of greatest concern is Indiana’s performance in collecting current support: currently, Indiana collects only 54% of the dollars owed.

This white paper did not examine possible causes for the performance gap. However, in interviews with CSB Regional Field Consultants, there was consensus that the main impediment is the backlog of cases awaiting a hearing. In most counties, there is insufficient court time to handle the volume of IV-D cases. Some counties report that it can take from six to nine months to have a court hearing on child support.

Another major concern is the inability to use administrative or expedited methods that state law authorizes. As noted above, many courts are requiring a judicial determination of paternity or ordering genetic tests in cases where there is a signed paternity acknowledgment. Some county offices report that the courts in their counties require that an income withholding order go before the court for judicial signature. Such practices are contrary to law and delay support reaching children. The result is an aggravation of the first concern. By requiring judicial action in cases that could proceed administratively, there is less court time available for complex cases that need judicial review.

The centralized state child support office also voiced a concern about the variety of procedures among the county prosecutor’s office.

IV. Description of Administrative Process States

As noted in the 2002 Lewin report, there are a number of steps in child support case processing. At each stage, a state can follow an approach that is characterized as more judicial or more administrative. The Lewin report classified any state scoring under 10 on its taxonomy scale as “highly administrative.” There were seven states that scored 6 or less: Alaska, Maine, Missouri, Montana, Ohio, Oregon, and Virginia. For this white paper, the state IV-D director in six of those seven states was contacted and asked to identify an agency representative who could provide detailed information about the state’s administrative processes. Each agency representative participated in a telephone interview, which followed an interview protocol. For the purpose of this white paper, the

State of Washington is also categorized as an administrative process state. Although Washington scored a 9 on the Lewin taxonomy scale, its director considers the state an administrative process state, rather than a quasi-administrative one.

This section summarizes the characteristics that these seven administrative states have in common. It also identifies variances among the states. The Appendix contains a more detailed description of the state processes, based on the telephone interviews and a review of relevant state statutes and administrative rules. Each description contains background information about the IV-D agency; a summary of the state administrative processes for paternity establishment, support establishment, review and adjustment, and enforcement; statistics regarding timeframes for processing cases and the percentage of cases where parties request an administrative hearing; strengths and limitations that the agency representative identified about its administrative processes; and a list of the representative's suggestions or identified best practices. Each agency representative was provided the opportunity to review the summary and suggest corrections, clarifications, or other edits. Each state description in the Appendix also includes a selection of the state's child support laws and administrative regulations.

Common Features³³

- The agency has authority to initiate a legal action by serving an administrative notice.
- Legal documents to initiate the action (e.g., Notice and Finding of Financial Responsibility) do not require an attorney signature.
- Legal pleadings are not initially filed with the court. The initial administrative notices are only required when they are part of the record for a court hearing (necessary in some states when there is no acknowledgment of paternity) or for any judicial review of the administrative decision.
- The child support agency, rather than the clerk of court, coordinates service of process.
- The child support agency has authority to issue administrative subpoenas and to require individuals, businesses, entities, etc. to provide certain information upon request.
- The child support agency has authority to enter consent orders.
- If there is no response to a Notice with a proposed support amount, an order may be entered based on the amount within the Notice.³⁴
- Hearings are conducted by an executive branch decision-maker who must comply with state law and agency regulations.
- Child support agency attorneys do not usually participate in the administrative hearing. In most administrative states, caseworkers present evidence on behalf of the agency although they are not allowed to examine witnesses.
- At such hearings, parties have the right to be represented by a lawyer. Relaxed rules of evidence apply. A record is made of the proceeding.
- Parties may request a judicial review of the administrative decision. This review is to a trial level court.
- The administrative support order is an enforceable order and does not require judicial ratification or approval.³⁵

The following explanations provide more detail on how the seven administrative states studied for this paper process paternity, support establishment, review and adjustment, and modification cases.

Paternity Establishment

If there is a paternity acknowledgment signed after the enactment of state legislation treating such acknowledgments as legal determinations of paternity, all of the administrative states in this study treat the case as a support establishment case.

In the State of Washington, a paternity affidavit signed prior to such legislation creates a rebuttable presumption of paternity. In such a case, the agency sends the presumed father a Notice of Parental Responsibility. The notice is served by certified mail, return receipt requested. It informs the presumed father of the time period within which he must request genetic testing or file an application for an administrative hearing. Because of the presumption, the purpose of the hearing is to resolve the support amount. If there is no timely response, the amount of support in the notice becomes final. It is not an administrative determination of parentage, but an administrative determination of the support obligation. For a paternity determination, the presumed father or custodial mother may request the agency to initiate a court action.

Montana informally contacts the alleged father prior to serving him with a formal Notice; the letter, which is sent by regular mail, notifies him of the allegation of parentage. Missouri also informally contacts the alleged father, by mailing him a letter informing him of the paternity allegation and advising him that he may sign an acknowledgment or request genetic testing. If the alleged father does not respond to the letter within 30 days, the current practice of the agency is to refer the case to the prosecuting attorney for further proceedings in court.

If there is no signed paternity acknowledgment in a case, five of the seven administrative process states³⁶ send the alleged father in a paternity case a formal notice of the allegation against him. They type of service varies. In Alaska, both parties are usually served by certified mail. Maine and Oregon serve the paternity notice by personal service. Montana uses both personal service and certified mail, return receipt requested, to serve the alleged father with the Notice of Parental Responsibility.

In all of the administrative process states, notification of the paternity allegation includes a paternity acknowledgment form. Execution of the paternity acknowledgment constitutes a determination of paternity. The notice also contains information about the alleged father's right to request genetic testing and to challenge paternity. In Alaska, the notice includes an order to provide financial information to the agency. In Montana and Oregon, the notice actually includes a proposed support amount based on income information available to the agency.

In two³⁷ of the seven states studied, if the alleged father does not respond to the Notice within the specified time period, the child support agency has authority to enter an

administrative order finding paternity. In Montana, the agency can prepare a default order but it must be signed by an administrative law judge. In all three of these states, the law provides a time period within which the father can appeal the entry of this default order or move to reopen/set aside the default order for good cause.

If the alleged father responds to the administrative notice by denying paternity, the agency in each state will coordinate genetic testing. In Montana, if the alleged father agrees to genetic testing, part of the agreement to participate in testing includes an agreement that a final order will be entered naming him the legal father if the test results indicate at least a 95% probability of paternity. If the alleged father does not agree to genetic testing, there is an administrative hearing on the issue of whether genetic tests can be compelled. In Alaska, if the genetic test results establish a presumption of paternity, the agency serves the alleged father with an administrative order establishing paternity and a form for requesting a formal administrative hearing if the father wishes to challenge the order. In Oregon, if the genetic test results establish a presumption of paternity, the agency serves a Notice of Intent on both parties by regular mail. The notice informs them that they can request a hearing on the issue of support or, if they continue to object to paternity, there will be a court hearing to adjudicate paternity. Because of the presumption, the court can enter a temporary order for support pending the paternity hearing.

In Virginia, if the test results show at least a 98% probability of parentage, the agency serves the parties with an administrative summons, along with a financial affidavit for the parties to complete and bring to a conference with a child support specialist. From that point on, it is treated as a support establishment case. Missouri and Montana are similar. In Missouri if test results indicate at least 98% probability of paternity, there is a presumption of paternity; at that point, the agency will use its administrative process to establish a support order. In Montana, if genetic test results show a 95% or higher probability of paternity, there is a presumption of paternity. The alleged father is provided the opportunity to sign a paternity acknowledgment. If he does not sign the acknowledgment, the agency will nevertheless proceed with support establishment because of the presumption.³⁸

In some states, if the test results exclude the alleged father, the agency can enter an administrative order of nonpaternity³⁹ or request a court order that states the man was excluded as the biological father by genetic testing.⁴⁰

In Alaska and Montana, either party is entitled to a formal administrative hearing if he or she timely files a request for a hearing on the issue of parentage. The request must be in writing and include the basis for the objection. In each state contacted, the parties may seek a review of the administrative decision by a court.

Several of the administrative process states studied do not resolve contested paternity cases through administrative hearings, but proceedings through the court. In Maine, if the alleged father signs a paternity acknowledgment, the acknowledgment constitutes a paternity determination. However, in the absence of an acknowledgment, if the alleged

father fails to respond to the Notice of Paternity Proceeding, refuses to submit to genetic testing, or does not sign a paternity acknowledgment within 15 days of notification that he has not been excluded by genetic testing, the agency may file the record of the proceeding in court and proceed to establish paternity judicially. Missouri has a similar process. In the State of Washington, if there is no paternity acknowledgment and none forthcoming, the agency refers the case to the prosecutor's office to establish paternity through the courts. In Oregon, if the alleged father challenges a default administrative paternity order or objects to entry of an administrative paternity order based on the genetic test results, the contest is heard by a court.

Support Establishment

When a child support establishment case⁴¹ is opened, some of the administrative process states that were studied contact the parties, prior to proposing a support amount, in order to obtain financial information. The agency then uses this information to calculate the support amount that is in a subsequent formal Notice and proposed order. For example, the child support agencies in Alaska and Missouri mail the parties a letter requesting financial information prior to serving a Notice and Finding of Financial Responsibility. In Maine and Virginia, the initial contact is more formal. In Maine, the agency serves the noncustodial parent with a notice, informing the parent of the agency's intention to establish a support order. The Notice advises the noncustodial parent to submit a completed financial affidavit within a set time period; otherwise, the agency will use the information it has to calculate a proposed support order. The parent may mail in the information. In Virginia, the agency serves both parties with an administrative summons, requiring the parents to bring their financial information to a scheduled conference with a child support specialist.

In these four states -- Alaska, Maine, Missouri, and Virginia -- based on the financial information provided by the parties, as well as income information available to the agency through data interfaces and other sources, a child support worker calculates the guideline amount and prepares a proposed support order. In Alaska, Maine, and Missouri, this proposed order is served on the parties. In Virginia, during the conference the parties may waive service and agree to a proposed order. Once they sign the proposed administrative support order, and certain waivers of service, the order becomes effective immediately.

In other states⁴², the agency does not seek financial information from the noncustodial parent prior to preparing a Notice that contains a proposed support amount; the proposed amount is based on income information provided by the custodial parent and available to the agency through data interfaces.

At some stage, each of the administrative process states contacted for this white paper serves the parties with a formal Notice concerning a proposed support amount. In Alaska, Missouri, Oregon, and Washington, the noncustodial parent is usually served by certified mail or personal service; if the custodial parent is receiving IV-D services, the agency mails her a copy of the Notice by regular mail. In Montana and Virginia, the agency uses both personal service and certified mail, return receipt requested, to serve the

parties with the Notice. In Maine, the initial Notice of Intention is served on the noncustodial parent by certified mail, return receipt requested. A copy is served on the custodial parent by regular mail. The later Notice of Proposed Order is served on both parties by regular mail.

The proposed amount in the Notice (or, in Virginia, the proposed administrative support order) is calculated based upon the financial information available to the agency, including information from data interfaces. If there is no current income information available, each administrative process state authorizes the caseworker to impute income; the basis for the imputation varies. The notice also states a time period in which a party must respond to the notice by requesting a review/hearing. Failure to do so will result in a support order, in accordance with the notice (or, in Virginia, the proposed administrative support order). The time period for filing a response varies among the states from 10 to 30 days from service of the notice.⁴³

In all of the administrative process states, if the parties do not respond to the Notice within the specified time period, an administrative support order can be entered based on the amount stated in the Notice. In some states⁴⁴, a child support agency representative may sign the default order. In other states⁴⁵, a default order must be signed by an administrative law judge. The order does not have to be filed with, or ratified by, the court in order to be effective and enforceable. In Alaska, the law provides a time period within which a party can appeal the entry of such a default order or move to reopen/set aside the default order for good cause. In Washington if a party files a late application for an administrative hearing, but one that is within one year of service of the notice, the Office of Administrative Hearing will still schedule a hearing; however, the filing does not stay further collection. After one year, the parent must show good cause for the failure to timely file the application for hearing. In Oregon a party may appeal an administrative default order within 60 days after the order is entered; appeal is to the circuit court and the review is *de novo*.

The seven administrative states vary regarding what happens if a party responds to the administrative Notice by requesting a review. In Alaska, the agency first conducts a conference with the parties, in person, by mail, or by phone; usually the conference is “by mail.” The parties may be represented by an attorney, but it is not necessary. During this initial review, the parties may present additional information about income and other guideline issues. The caseworker decides whether the initial Finding of Financial Responsibility in the Notice should be amended. The caseworker then sends a copy of his or her decision to both parties by first class mail. The parties have a set time period within which to file a written request for a formal administrative hearing. If no request is made, the Finding of Responsibility becomes final. In Oregon, a party can request a negotiation conference in response to a Notice. If no agreement is reached, the party can request an administrative hearing. In other states⁴⁶, if a party objects to the Notice, the first review is a formal administrative hearing. In Montana and the State of Washington, during the pendency of the administrative hearing, the parties may work with the caseworker to reach an agreed upon modification order, which is then filed with the administrative law judge.

All of the administrative process states in this study provide parties with the opportunity to request a formal administrative hearing. The request usually must be in writing and include the basis for the objection. In Washington, the request may be made orally. In each state contacted, the parties may seek a review of the administrative decision by a court.

In each of the administrative states studied for this white paper, an administrative support order is a final, enforceable order; it does not require ratification by the court in order to be effective.⁴⁷ In order to enforce an order by judicial means, however, the Montana and Oregon child support agencies usually file and docket the administrative order with the court; by docketing the order with the court, the agency can request contempt of court proceedings, a writ of execution, and the order can operate as a judgment lien.

Review and Adjustment/Modification

None of the administrative process states in this study have statutory authority to include a Cost of Living Adjustment (COLA) in an administrative support order.

None of the administrative process states in this study have statutory or regulatory authority to administratively modify a judicial support order. In Montana and Oregon, an administrative law judge can propose a modification to a court order. However, it does not become effective until it is filed with, and approved by, the court that issued the original order. In Missouri, if there is no response to the administrative Motion to Modify, the child support agency may enter a default order. It does not become effective, however, until it is filed with, and approved by, the court that entered the original support order. In Virginia there is no administrative hearing regarding the modification of a court order. However, a child support specialist can review the parties' financial information, as well as information available through the agency's database interfaces, and prepare a Notice of Proposed Modification of a Court Order. The Notice is forwarded to the court that issued the order. If approved, the court serves the parties with the Notice. The parties have a specified time period within which to object to the proposed modification by filing a request for a court hearing. If there is no timely request, the court will sign the documents approving the proposed modification. If there is a request for hearing, the court will schedule a judicial hearing. Washington law authorizes a different approach. The agency cannot administratively modify judicial support orders. However, if there is a provision in the court order requiring the parties to exchange financial information every year and stating that the support order can be adjusted accordingly, the "adjustment" can be done administratively. If there is no such provision, any change to the support amount must be made by the court.

If a party requests a review of an administrative support order, in four states⁴⁸ the agency first sends the parties a letter or Notice informing the non-requesting party of the review request and requesting financial information. Based on the information submitted by the parties, a caseworker conducts an internal review to determine whether any change meets the statutory threshold for a change in circumstances. The caseworker prepares a Notice,

which informs the parties of the outcome of the review. If appropriate, the Notice also contains a proposed modified support amount.

In Montana, the agency serves the parties with a Notice of Administrative Review and an Order for the Production of Financial Information. The Notice contains a proposed support amount based upon information provided by the party requesting the review and information available through database interfaces and other sources. If the parties comply with the Order for Production, a caseworker will review the information and perform a new guideline calculation if necessary. If the new calculation changes the proposed order from the amount in the first Modification Notice served, the caseworker will issue an Amended Modification Notice and Order. There is no order to produce in this Notice.

The states vary in options available to the parties in response to a Notice of Review or Notice of Proposed Modification. In Washington, the parties have a specified time period within which to request a Modification Conference. At this informal meeting, which is not an administrative hearing, either party can bring in income information or other information which he or she feels should change the caseworker's findings. Parties also have the right to bring in counsel, if desired. If a result of the conference is an agreed order, the agency will prepare the agreed order; the order is then entered by the Attorney General's Officer or Prosecutor's Office. If the parties cannot agree to a support amount, the agency will refer the case to the Attorney General or Prosecutor's Office for the filing of a modification action with the court. The parties also have the right to bypass the agency "review for modification" process and proceed directly to court.

In three⁴⁹ of the administrative process states studied for this white paper, the parties have a specified time period within which to appeal the caseworker's review decision, as reflected in the Notice, to an administrative hearing officer. If there is no response within that time period, a modified order is issued consistent with the proposed amount in the notice. In Montana, the default order must be signed by an administrative law judge; other states authorize the agency to issue the order. If a party does timely object to the proposed modification, there is an administrative hearing. Parties can seek judicial review of the administrative hearing decision.

The State of Washington is the only administrative state studied where, if there no agreement to the proposed modification amount, there is a court hearing.

If the noncustodial parent requests a review, and the agency denies the parent's request for review and modification because the facts do not meet the threshold for modification, Maine allows the noncustodial parent to object to the agency's decision and request an administrative hearing. In Oregon, if either parent's request for review and modification is denied by the agency, the parent can file a motion to modify with the court.

Enforcement

In order to receive federal funding, a state must have legislation giving its child support agency administrative authority to initiate income withholding, impose liens arising by operation of law, and – in appropriate cases – force the sale of property and distribute the proceeds to satisfy the child support obligation, and seize lump sums and financial institution accounts in order to enforce support. Administrative states make full use of these remedies, as well as other administrative enforcement tools such as an order to withhold and deliver, and a warrant of distraint. Administrative states also handle license suspension through the administrative process. No administrative process state can enforce an administrative order by contempt, which remains a judicial remedy.

Some of the administrative states contacted for this paper initiate enforcement by serving the obligor with a Notice of Support Debt⁵⁰ or Notice of Intent to Establish an Arrearage⁵¹. Service is usually by certified mail, return receipt requested. The Notice includes a demand for payment within a specified time period. If there is no response, the debt/arrearage asserted by the notice is legally established. The Montana child support agency ceased using such a notice once the state enacted statutes stating that child support installments become judgments once they fall past due and create a lien by operation of law. Rather than a Notice of Support Debt, Montana provides notice in the manner required by the particular enforcement action being taken. States using a Notice of Support Debt or Notice of Intent to Establish an Order are more likely to serve the obligor by certified mail.

Each state provides the obligor an opportunity to contest the notice. Two states – Alaska and Washington -- provide the opportunity for an agency review prior to a formal administrative or court hearing. In Alaska, the contest is initially conducted through an informal conference with a caseworker. The review can be by telephone or in-person. From the informal conference, a party can appeal to an administrative hearing officer. In Washington, the noncustodial parent has a certain time period within which to request a conference board or to obtain a stay from the court. A conference board is an informal review of case actions. All members of the conference board are Division of Child Support staff; the chair is a child support attorney; interestingly, if the custodial parent wishes, the custodial parent can request an administrative hearing rather than a conference board. The appeal from the conference board or administrative hearing is to the court. In most of the other administrative states⁵² studied, the contest is usually initially heard by an administrative hearing officer, although some enforcement remedies – like license suspension – may provide for an intermediate caseworker review before the possibility of a hearing before an administrative hearing officer. Hearings before an administrative hearing officer comply with the state's Administrative Procedure Act. In Missouri, specially designated nonnattorney hearing officers can determine arrearages in an enforcement action, whereas in establishment cases the hearing officer must be an attorney. In each state, a party can appeal the administrative decision to the court.

Forum for Contested Orders and Appeals

The administrative process states that were studied for this paper vary in the location of the administrative hearing officer. In Montana, the hearing officer is an employee of the

child support agency, although located in an independent division of the agency. In Alaska, Maine, Missouri, and Virginia, the hearing officer is employed by the umbrella agency in which the child support agency is located. In Oregon and Washington, contests are heard by administrative law judges who are employed by the Office of Administrative Hearings, which is a different agency from the child support agency or its umbrella agency.

The administrative hearings are governed by the state's Administrative Procedure Act or administrative rules governing hearings. In each state, the parties have a right to be represented by counsel although legal representation is not necessary. A IV-D attorney rarely participates in the hearing. Instead a designated caseworker usually presents the case on behalf of the agency. In Oregon not even the caseworker routinely appears. Because Oregon administrative rules provide that the agency may designate its file as the record in its contested case notice, the agency revised its notice to so designate. The case file is now sent over with any hearing request; a case manager only appears upon request of the ALJ. In each state, the parties may present evidence and the hearing is recorded. In Montana, by law the hearing must be conducted initially telephonically; a party can later request a *de novo* in person hearing. In most of the other administrative states studied for this paper, the parties have the option of proceeding telephonically or in person. According to agency representatives, administrative hearings are usually conducted in person in Maine and Alaska, and telephonically in Missouri, Oregon, Virginia, and the State of Washington.

Parties in each state have the right to object to the administrative decision. In Maine, the first review is by a different hearing officer from the Office of Administrative Hearings; from that review decision, the parties can seek judicial review. In the other administrative states studied, the parties can directly seek judicial review of the administrative decision. In Alaska, Oregon, and Virginia; the judicial review is *de novo*. In Maine, Missouri, and Montana, the judicial review is on the record.⁵³

Only two administrative states surveyed for this paper have faced challenges to the constitutionality of their administrative procedures – Missouri and Montana. In each, appellants argued that the administrative procedures for modification of a judicial order violated the state's constitution regarding separation of powers.

In the Missouri cases, the Missouri Supreme Court upheld the modification procedures.⁵⁴ In the most recent case, the noncustodial parent argued that the agency's filing of a Motion for Modification of Child Support Order constituted an attempt by the child support agency (CSE) to act in a judicial rather than an administrative capacity and thereby violated the separation of powers. The Supreme Court disagreed: whether issued by CSE or an administrative hearing officer, the administrative order modifying a court order is not effective under Missouri law until the administrative order is filed with and approved by the court that entered the court order. It is this statutory requirement of court approval that the authority placed in CSE to initiate a process to modify judicial child support orders does not offend the Missouri constitution.

In contrast, the Montana procedure being challenged required the obligor or obligee to petition for review of the administrative modification in a new proceeding, requiring a new filing fee. Moreover, the judicial review of the administrative modification of its own order was limited to whether the agency's decision was arbitrary or an abuse of discretion. The Montana Supreme Court concluded that the legislature had granted the agency "judicial power" to make binding child support orders without automatic judicial review, in violation of the separation of powers clause in the state constitution.⁵⁵ As a result of the *Seubert* decision, the legislature amended Montana's administrative procedures for modification of a judicial order. Under current legislation, the agency can use its administrative processes to enter a proposed modified support order. However, the order does not become effective as a final order until the modified order is filed with and approved by the court that entered the order.

V. Description of Quasi-Administrative Process States

There were five states that scored 8 or 9 on the Lewin taxonomy scale: Arkansas, Colorado, South Dakota, Utah, and Washington. When Colorado and South Dakota were contacted for this white paper, they characterized themselves as quasi-administrative. However, agency representatives in Washington considered their state an administrative process state. Therefore, for purposes of this white paper, Washington is characterized as an administrative process state.

Interviews were conducted with agency representatives in Colorado and South Dakota. This section summarizes the characteristics that these two states have in common. It also identifies variances. The Appendix contains a more detailed description of the state processes, based on the telephone interviews and a review of relevant state statutes and administrative rules. Each description contains background information about the IV-D agency; a summary of the state administrative processes for paternity establishment, support establishment, review and adjustment, and enforcement; statistics regarding timeframes for processing cases and the percentage of cases where parties request an administrative hearing; strengths and limitations that the agency representative identified about its administrative processes, and a list of the representative's suggestions or best practices. Each agency representative was provided the opportunity to review the summary and suggest corrections, clarifications, or other edits. Each state description in the Appendix also includes a selection of the state's child support laws and administrative regulations.

Features Similar to Judicial Process

- The child support agency does not have authority to enter consent orders or default orders. The administrative pleadings are filed with the court, along with an application for a court order. (South Dakota)
- Contested cases are resolved by a quasi-judicial official, who is part of the judicial branch.
- A IV-D attorney, or attorney under contract or cooperative agreement, presents the case on behalf of the agency at the court hearing on a challenge.
- At the court hearing, rules of civil procedure, rules of evidence, etc. apply.

Features Similar to Administrative Process

- Legal documents to initiate the action (e.g., Notice and Finding of Financial Responsibility) do not require an attorney signature.
- Legal pleadings are not initially filed with the court. The initial administrative notices are only required when they are part of the record for a court hearing (e.g., contested paternity case), for judicial review of a proposed administrative decision, or to accompany an application for a court order.
- The child support agency, rather than the clerk of court, coordinates service of process.
- The child support agency has authority to issue administrative subpoenas and to require individuals, businesses, entities, etc. to provide certain information upon request.
- Caseworkers are authorized to conduct negotiation conferences (Colorado).
- If there is no timely response to a Notice with a proposed support amount, the agency can issue a default order, based on the amount within the Notice. (However, the default order must be filed with, and approved by, the court before it is effective.) (Colorado)
- The child support agency has authority to enter consent orders. (Colorado)

The following explanations provide more detail on how the two quasi-administrative process states studied for this paper process paternity, support establishment, review and adjustment, and modification cases.

Paternity Establishment

Both Colorado and South Dakota resolve paternity cases through a combination of administrative and judicial processes. At no point is there a hearing before an administrative law judge or hearing officer.

In both states, if there is a presumption of paternity, the agency serves the presumed father with a notice. In Colorado it is a Notice of Financial Responsibility; in South Dakota it is a Notice of Support Debt. In both states, the notice is served on the presumed father either personally or by certified mail, restricted delivery. Colorado serves the mother a copy of the notice by regular mail. South Dakota law does not require service on the custodial parent.

In Colorado, the notice provides a date for the presumed father to come to the agency for a negotiation conference. Included with the notice is a financial affidavit, which the father is directed to complete and bring to the conference. At the conference, if the man acknowledges paternity, the caseworker has him sign a paternity acknowledgment. Based on his income information, the caseworker calculates the guideline amount of support. If the father agrees to the amount, the caseworker also prepares an administrative Order for Financial Responsibility. The agency files the administrative order with the court. The clerk of court assigns the order a case number. It then has the full force of a court order. Colorado law does not require the court to sign or confirm the order.

In Colorado, if there is no agreement, the agency submits a request for a court hearing. The judicial hearing on paternity and support is before a court magistrate. It is on the record, and parties may be represented by legal counsel. Any appeal is to the district court judge.

Colorado follows the same procedure if paternity is at issue and there is no presumed father. The only difference is that the agency sends a different notice to the alleged father. This notice informs the alleged father of the paternity allegation, and of his rights and responsibilities, including the right to a genetic test. If the negotiation conference results in agreement, the agency files an administrative order with the court. If there is no agreement, there is a hearing before a court magistrate. Any appeal is to district court.

Colorado law also provides for a default administrative paternity order. If the presumed or alleged father fails to appear for a scheduled negotiation conference, the agency will issue a default order in accordance with the Notice, establishing paternity and financial responsibility. The agency files a copy of the order, proof of service, the custodial mother's verified paternity affidavit and any genetic test results with the clerk of court. The clerk assigns the order a case number. It is up to the court to approve the default order. Once approved by the court, the default order establishing paternity and financial responsibility has the full force of a court order.

The South Dakota process is more judicial than that used by Colorado. The agency does not have authority to enter an administrative order determining paternity. In South Dakota, if there is a presumed father, the notice informs him that if he does not request a hearing within 10 days from the date of service, the agency will request that the court enter an order establishing a child support order. If there is no timely objection, the agency files with the clerk of court the notice of support debt, proof of service, and an application for an order for support. There is no requirement that the agency file paternity pleadings. The court must enter an order establishing support in accordance with state guidelines.

If the presumed father contests paternity, he must bring an independent action in court to establish that he is not the father of the child. Meanwhile, the agency proceeds with establishment of a support obligation. The agency files the notice, proof of service, the presumed father's response with the clerk of court. There is a hearing before a referee to determine the support amount. The referee makes a report, which is served on the parties and filed with the circuit court. If a party files a timely objection to the referee's report, the circuit court must schedule a hearing. The hearing is solely on the record established before the referee.

Where there is no presumption of parentage, the South Dakota child support agency attempts to reach a stipulation and agreement with the alleged father on the issues of paternity and support, which is then approved by court order and judgment. If there is no agreement, the agency refers the case to one of its contract prosecutors to commence a formal paternity action against the alleged father by way of Summons and Complaint. Generally, however, if the alleged father questions paternity, the agency coordinates

genetic testing, which will either exclude the alleged father or establish a probability of paternity (which may create a legal presumption).

Support Establishment

In both Colorado and South Dakota, when the only issue is support, the agency sends the noncustodial parent a notice of his obligation. In both states, the noncustodial parent is served either personally or by certified mail, restricted delivery. In Colorado the agency mails the custodial parent a copy. South Dakota law does not require service on the custodial parent. In Colorado, the notice does not include a support amount. Rather, the notice directs the noncustodial parent to appear at a scheduled conference with financial information. In South Dakota, the agency calculates a support amount based on income information it has from various sources; that amount is stated in the Notice. The Notice also informs the noncustodial parent that if he or she does not request a hearing within 10 days of the Notice, the agency will request that the court enter an order establishing the child support amount as set forth in the Notice. In both states if there is no current income information for the noncustodial parent, the caseworker may impute income according to law and agency policy.

In Colorado, during the negotiation conference, a caseworker reviews the noncustodial parent's income information as well as information from various database sources and calculates the guideline amount. If the noncustodial parent agrees to the guideline amount, the caseworker prepares an Order for Financial Responsibility, which the noncustodial parent signs. The agency files the order with the clerk or court, who assigns it a court number. The order then has the full force of a court order. Colorado law does not require confirmation by a court.

If there is no agreement, the Colorado agency submits a request for a court hearing. The hearing on support is before a court magistrate. Any appeal is to the district court.

If the noncustodial parent fails to appear for a scheduled negotiation conference, the agency will issue a default order establishing a financial responsibility in accordance with the Notice. The agency files a copy of the order and proof of service with the clerk of court. The clerk assigns the order a case number. It is up to the court to approve the default order. Once approved by the court, the default order establishing paternity and financial responsibility has the full force of a court order.⁵⁶

In South Dakota, if there is no timely response to the administrative Notice of Support Debt, the agency files with the clerk of the circuit court the notice, proof of service, and an application for an order for support. The court must enter an order for support in accordance with the child support guidelines. The court may also enter an order for health insurance, genetic testing costs, adjudicating the paternity of the child or establishing custody of the child.

If the noncustodial parent objects to the Notice and requests a hearing, the agency files the administrative documents and the parent's response with the clerk of court. The hearing is before a child support referee. The referee files his or her decision with the

court, and serves the parties with copies. The parties have 10 days to object to the referee order. If they do not timely object, the court must without further notice enter its order. If there is an objection, the court schedules a hearing. The hearing is on the record established before the referee.

Review and Adjustment/Modification

Neither of the quasi-administrative processes in this study has statutory or regulatory authority to administratively modify a judicial support order. Effective July 2008, in Colorado if the original support order is a court order, the child support agency will be able to file in court a proposed order along with its Motion to Modify. The court can accept the proposed order without further hearing, or hold a hearing and enter its own order; the modified order will remain a court order.

In a non-TANF case in Colorado, if a party files a request for modification, the child support agency will review the request to determine if there is a change in circumstances. If the agency does not object to the parent's request, the agency will serve the obligor with a Notice of Financial Responsibility requiring the obligor to participate in a negotiation process. From that point on, the process is similar to Colorado's establishment process. If the agency objects to the modification request, the agency advises the party of his or her right to request a court hearing.

In South Dakota the agency plays a more minimal role. In a non-TANF case, if a party files a petition for modification, the agency must file the petition in the office of the clerk of court. The hearing is before a referee, a quasi-judicial official. Based on the evidence presented, the referee makes a report to the court, recommending the monthly support amount or modifying the health insurance coverage terms. The referee files the report with the court and mails the parties a copy. Each party has 10 days from service to file an objection. If no objection is filed, the court, without further notice, may enter its order. If a party files an objection, the court schedules a hearing on the record established before the referee.

Enforcement

The child support agencies in Colorado and South Dakota have a full range of administrative enforcement remedies. The one enforcement remedy requiring a judicial hearing is contempt.

The process for initiating an enforcement action varies, depending upon the particular enforcement sought. For example, in Colorado, license suspension is initiated by a notice sent by regular mail. Any challenge can be heard telephonically. If appropriate, the caseworker has authority to suppress the license suspension.

In South Dakota, any challenge to enforcement is heard by a referee. Based on the evidence presented, the referee issues his or her report. The referee files the report with the court. The parties may appeal the referee's decision to the circuit court.

Forum for Contested Orders and Appeals

The quasi-administrative process states that were studied for this report do not employ administrative law judges. There are no administrative hearing officers and no compliance with the hearing procedures of the state Administrative Procedure Act.

In Colorado initial court hearings are before a court magistrate sitting in circuit court. The court sets the date and location of the hearing. The agency sends a notice by first class mail to the obligor informing him or her of the hearing. Additional service is not required. In order to meet federal requirements of expedited process for child support enforcement, the court must hold the hearing and decide the issue of child support within 90 days after receipt of the notice. If the noncustodial parent is contesting paternity, the hearing must be within six months after receipt of the notice.

The judicial hearing is on the record, and parties may be represented by legal counsel. The Colorado agency is represented by a IV-D attorney. Any appeal is to the district court judge. Once a judicial order is entered, any subsequent modification must be handled as noted below.

In South Dakota initial court hearings are before a court referee. Both parents are notified of the hearing date by first class mail. The hearing can be in person or by telephone. Parties have the right to present evidence and to be represented by an attorney. Based on the evidence, the referee makes a report to the court, recommending a proposed support amount. The report includes findings and conclusions of law.

The referee files the report with the court and serves the parties with copies, by first class mail. The parties have 10 days from the date of service of the report in which to file objections. If there is no objection, at the expiration of the 10 days, the circuit court may without further notice enter its order. If there is an objection, the circuit court schedules a hearing on the report. The hearing is on the record established before the referee. The circuit court may adopt the referee's report, may modify it, or may remand it with instructions or for further hearing.

VI. Description of Quasi-Administrative Process in a Judicial State

The 2002 Lewin report classified any state scoring 14 or above on its taxonomy scale as "highly judicial." Twenty-three states and the District of Columbia met this classification.⁵⁷ At least one of the states, Florida, has since enacted administrative processes for the establishment of support. For the purpose of this white paper, interviews were conducted with representatives of the Texas Office of the Attorney General (OAG), which operates the child support program in Texas. Although classified as a highly judicial state, Texas is an example of how administrative processes can be incorporated within a judicial environment. This section summarizes those processes. The Appendix contains a more detailed description of the Texas administrative processes, based on the telephone interviews and a review of relevant state statutes and administrative rules. The description contains background information about the IV-D agency; a summary of the state administrative processes for paternity establishment,

support establishment, review and adjustment, and enforcement; statistics regarding timeframes for processing cases and the percentage of cases resolved administratively by consent rather than by a judicial hearing; strengths and limitations that the agency representative identified about its administrative processes, and a list of the representative's suggestions or best practices. The Texas OAG representatives were provided the opportunity to review the summary and suggest corrections, clarifications, or other edits. The Texas description also includes a selection of the state's child support laws.

Features Similar to Judicial Process

- An assistant attorney general must sign proposed orders.
- The child support agency does not have authority to enter a consent order. Where there is an agreed order, the parties waive service and the agreed order is filed with the court for court approval. However, by statute, if the court finds that all parties agreed to the order and the requisite waivers are included, the court must approve the proposed agreed order.
- The child support agency does not have authority to enter a default order. However, when the agency submits a Petition for Confirmation of a Non-Agreed Child Support Review Order to the court, the law requires the court to sign the submitted proposed non-agreed order if the non-appearing party does not request a hearing after notice by the clerk; the court's approval is not discretionary.
- In a contested case, the clerk of court coordinates service of process.
- Contested cases are resolved by an associate judge at a court hearing.
- An agency attorney appears on behalf of the agency at the contested court hearing.

Features Similar to Administrative Process

- Legal documents to initiate the action (i.e., Notice of Child Support Review) do not require an attorney signature.
- Legal pleadings are not initially filed with the court. The initial administrative notices are filed with the court when they are part of the record for a court hearing (e.g., contested paternity or support action) or for judicial review of an agreed or non agreed order.
- Trained child support review officers are authorized to conduct negotiation conferences.
- The child support agency attempts to reach an agreed order, which must be approved by the court.
- The child support agency has authority to issue administrative subpoenas and to require individuals, businesses, entities, etc. to provide certain information upon request.

Paternity Establishment

Texas resolves paternity cases through a combination of administrative and judicial processes. At no point is there a hearing before an administrative law judge or hearing officer.

The focus of the Texas' procedures is obtaining a consent order through an agency review process. In a paternity case where there is no signed paternity acknowledgment, the OAG mails the parties a Notice of Child Support Review. This letter informs the parties of a negotiation conference on a specified date. The letter states that the party may be represented by an attorney and that participation in the conference is not mandatory. However, if the party does not participate, the review will continue and may result in an order. A trained child support review officer (CSRO) meets with the parties. If the parties agree to paternity and support, the CSRO prepares a proposed agreed order for their signature. The alleged father also signs a notarized waiver of pleadings and service. Once approved by an assistant attorney general, the CSRO files the proposed agreed order with the court. By statute, if the associate judge finds that all parties have agreed to the order and the requisite waivers are included, the associate judge must confirm the proposed review order.

If during the conference the alleged father requests genetic testing, a second conference is scheduled after the return of the test results. If genetic testing excludes the man from parentage, the agency no longer proceeds against him. Unlike some states studied for this report, the agency does not file a proposed order of nonparentage with the court.

If there is no exclusion but during the second conference the man continues to deny parentage, the alleged father may sign a waiver of service and an agreement to appear in court at a specified date for a court determination of all unresolved issues. The CSRO prepares a Petition for Confirmation of Non-Agreed Child Support Review Order. Once approved by an assistant attorney general, the petition, proposed non-agreed review order, and any documentary evidence – such as the genetic test results – are filed with the clerk of court. The court holds a hearing at which the parties may present evidence. The resulting order is mailed to both parties by first class mail. Either party can file a motion for a new trial or appeal within 30 days.

If the alleged father does not appear at the negotiation conference, the OAG may proceed with the review and prepare a non-agreed child support review order, based on the information available to the agency. A petition for confirmation, the proposed non-agreed review order, and any documentary evidence are filed with the clerk of court. The clerk delivers a copy by personal service to the non-appearing party. The Notice informs the non-appearing party that he or she has 20 days from the date the confirmation petition was filed to request a hearing. If the alleged father files a request, a hearing is held. If the alleged father does not request a hearing, the court must sign the submitted proposed non-agreed order; the court's approval is not discretionary. The order is served on the parties by regular mail. A party can file a motion for a new trial or appeal the decision within 30 days.

The judicial process, which requires a pleading filed with the court, is usually reserved for paternity cases that involve a minor parent or presumed father.

Support Establishment

The OAG most frequently uses the Child Support Review Process in support establishment and modification cases. The process is the same as described above. At the negotiation conference, the CSRO calculates a proposed support amount based on the income provided by the parties, as well as from data interfaces. In the rare case where there is no current income information, the CSRO imputes income at minimum wage for a 40-hour week. If the parties agree to the guideline amount, the CSRO prepares a proposed agreed order. The CSRO in general has no authority to deviate from the guideline amount unless both parties agree to the deviation. Some offices have adopted the policy that if the parties want to deviate from the guideline amount, they will prepare a non-agreed order and refer the case to court for resolution.

If the conference does not result in agreement, the CSRO prepares a non-agreed order that identifies the contested issues. The process is the same as described above. There is a court hearing to resolve the support issues.

If a party does not attend the conference, the process is the same as described above for paternity establishment.

Review and Adjustment/Modification

The Child Support Review Process described above for establishment is also used for review and adjustment.

Enforcement

The Texas child support agency has a full range of administrative enforcement remedies. It can use the Child Support Review Process, described above, to obtain a sum certain judgment for arrears. The only difference is that the notice includes a statement of the alleged arrears amount and a list of available defenses. The only enforcement that always requires a court hearing is contempt.

Forum for Contested Orders and Appeals

Texas does not employ administrative law judges or administrative hearing officers to hear child support cases. There is no compliance with the hearing procedures of the state Administrative Procedure Act. All orders, even agreed upon orders, must be signed by a judge. However, where there is an agreed order and the requisite waivers are filed, judicial confirmation of the order is a ministerial act.

Texas initially attempts to resolve contested issues through a negotiation conference in which parties meet with a CSRO. Participation is not mandatory, but if a party does not attend the scheduled conference, the review will nevertheless proceed. Parties may be represented by counsel. Negotiation conferences can be conducted in person, by telephone, or by video-conferencing; most are in-person. There is no record of the negotiation. The Texas Administrative Procedure Act does not apply.

If the parties both appear and participate in the conference, the result is either an agreed order or a non-agreed order. By statute, if the agency files an agreed order with the court

and the associate judge finds that all parties have agreed to the order and the requisite waivers are included, the associate judge must confirm the proposed review order within three days after it is filed. The court has no discretion.

If the parties sign a waiver of service and a non-agreed order, to appear in court at a specified date and time for a court hearing, the documents and waiver are filed with court and the court holds a hearing. If the parties appear at the scheduled hearing, the court accepts evidence. The parties may have legal representation. The agency is represented by an assistance attorney general; the CSRO is no longer involved. There is a record of the proceeding. Either party can file a motion for a new trial or appeal within 30 days. If a party fails to appear at the scheduled hearing, the court may issue a default order. The defaulting party can then file a motion for a new trial or appeal within 30 days.

If a party does not appear at the negotiation conference, the agency prepares a non-agreed child support review order. Once filed with the clerk, the order and Petition for Confirmation are served on the non-appearing party by personal service. If the party does not request a hearing within 20 days, the court must sign the submitted proposed non-agreed order; the court has no discretion.

VII. Comparison of State Performance

There are five CISP performance measures that determine a state's receipt of federal incentives for child support work. These measures are: paternity establishment, the percent of cases in which support has been established (support establishment), the percent of cases in which a collection has been made on current support due (current collections), the percent of cases in which a payment has been made on arrearages due (arrearage collections), and cost-effectiveness.

In its 2004 Annual Report to Congress, OCSE reported audited state data for federal fiscal years 2000 – 2004. In its FFY 2005 and 2006 Preliminary Data Reports, it reported unaudited state data. Based upon the data presented in those reports, Figures 3 through 7 depict the performance of each state interviewed on each of the CISP performance measures. More information, as well as an explanation of how each performance measure is calculated, is included in the Appendix.

PATERNITY ESTABLISHMENT PERFORMANCE MEASURE

	2005	2006	Measure
Judicial			
Indiana	82.3	86.2	IV-D PEP
Judicial with Admin			
Texas	108.0	93.0	Statewide PEP
Quasi-Admin.			
Colorado	92.4	93.0	Statewide PEP
South Dakota	103.6	108.7	IV-D PEP
Administrative			
Alaska	104.8	98.0	Statewide PEP
Maine	111.0	96.3	IV-D PEP
Missouri	92.5	92.9	Statewide PEP
Montana	105.4	108.7	IV-D PEP
Oregon	91.7	92.1	Statewide PEP
Virginia	89.3	91.7	Statewide PEP
Washington	95.2	100.2	IV-D PEP
National Average	87.6 97.4	89.8 97.9	IV-D PEP Statewide PEP

Figure 3: Paternity Performance Measure

Source: Table 10, CSE FY 2005 Preliminary Data Report (no assumption is made regarding data reliability); Table 12, CSE FY 2006 Preliminary Data Report (no assumption is made regarding data reliability).⁵⁸

As Figure 3 depicts, there is variation in scoring within and among the legal systems. In FY 2006, both Indiana and Texas, which are scored by Lewin as highly judicial states, scored below the national average. However, one of the quasi-administrative states and three of the highly administrative process states also scored below the national average. All four of the states scoring above the national average used the IV-D PEP formula rather than the Statewide PEP formula. Indiana was the only state studied which used the IV-D PEP formula and fell below the national average in FY 2006.

SUPPORT ORDER ESTABLISHMENT PERFORMANCE MEASURE

	2000	2001	2002	2003	2004	2005	2006
Judicial							
Indiana	51.5%	50.1% *	70.6%	75.1%	70.5%	69.4%	68.4%
Judicial with Admin							
Texas	55.8%	62.6%	69.0%	75.7%	79.8%	82.2%	82.7%
Quasi-Admin.							
Colorado	78.1%	81.6%	83.5%	83.7%	84.7%	85.4%	86.3%
South Dakota	92.6%	93.9%	92.0%	94.1%	93.7%	96.0%	93.0%
Administrative							
Alaska	78.5%	78.7%	82.9%	82.8%	86.8%	92.4%	92.2%
Maine	88.6%	88.3%	87.2%	90.0%	90.3%	89.1%	87.7%
Missouri	73.8%	76.1%	78.9%	79.5%	80.7%	81.6%	82.8%
Montana	83.9%	83.3%	83.1%	84.1%	85.2%	88.1%	88.0%
Oregon	66.3%	66.7%	66.9%	68.6%	67.5%	67.4%	66.4%
Virginia	67.8%	74.5%	80.2%	82.9%	83.5%	84.7%	85.2%
Washington	89.3%	89.9%	91.0%	91.0%	89.7%	89.6%	89.9%
National Average	62.4%	66.4%	70.8%	72.3%	74.4%	75.9%	77.3%

* Not reliable data, based on audit

Figure 4: Support Order Establishment Performance Measure

Source: Table 10, CSE FY 2005 Preliminary Data Report (no assumption is made regarding data reliability); Table 12, CSE FY 2006 Preliminary Data Report (no assumption is made regarding data reliability). Measures for 2000 – 2004 were calculated using data reported in the OCSE FY 2004 Annual Report to Congress. All measures have been rounded to the nearest thousandth.

As Figure 4 depicts, in FY 2006 nearly every state studied for this report scored above the national average. The exceptions were Indiana, a judicial state, and Oregon, an administrative process state.

CURRENT COLLECTIONS PERFORMANCE MEASURE

	2000	2001	2002	2003	2004	2005	2006
Judicial							
Indiana	44.2%*	46.8%	48.5%	50.5%	51.0%	52.8%	53.8%
Judicial with Admin							
Texas	65.1%	62.0%	59.9%	57.7%	58.5%	60.5%	62.3%
Quasi-Admin.							
Colorado	50.1%	52.8%	55.0%	55.2%	55.5%	57.7%	59.1%
South Dakota	67.7%	62.0%	59.9%	57.7%	58.5%	60.5%	62.3%
Administrative							
Alaska	49.2%	51.2%	53.8%	55.7%	55.5%	55.0%	54.9%
Maine	57.3%	59.6%	57.8%	55.7%	56.6%	60.3%	61.1%
Missouri	47.8%	49.2%	50.7%	52.7%	53.3%	54.7%	55.7%
Montana	56.8%	56.7%	58.5%	59.1%	58.4%	60.7%	61.5%
Oregon	59.6%	59.6%	60.4%	59.8%	59.3%	60.1%	60.4%
Virginia	56.5%	58.2%	59.0%	59.7%	60.0%	60.9%	61.6%
Washington	60.3%	61.9%	64.0%	64.3%	62.9%	63.3%	64.3%
National Average	53.9%	60.4%	57.5%	58.0%	59.0%	59.9%	60.3%

Figure 5: Current Collections Performance Measure

Source: Table 10, CSE FY 2005 Preliminary Data Report (no assumption is made regarding data reliability); Table 12, CSE FY 2006 Preliminary Data Report (no assumption is made regarding data reliability). Measures for 2000 – 2004 were calculated using data reported in the OCSE FY 2004 Annual Report to Congress. All measures have been rounded to the nearest thousandth.

As Figure 5 depicts, in FY 2006 there was variation within and among the legal systems on current collections performance. Of the 11 states studied, four scored below the national average. Those states included Indiana (judicial), Colorado (quasi-administrative), Alaska (administrative), and Missouri (administrative).

ARREARAGE COLLECTIONS PERFORMANCE MEASURE

	2000	2001	2002	2003	2004	2005	2006
Judicial							
Indiana	51.4%	51.1%	52.6%	54.8%	56.2%	58.0%	58.8%
Judicial with Admin							
Texas	63.4%	63.0%	64.5%	62.3%	63.5%	65.2%	67.3%
Quasi-Admin.							
Colorado	62.5%	64.0%	66.1%	60.5%		65.7%	67.3%
South Dakota	76.3%	68.5%	68.6%	69.2%	68.8%	69.5%	68.5%
Administrative							
Alaska	65.1%	68.5%	67.4%	67.6%	66.6%	67.5%	66.5%
Maine	68.75%	61.5%	61.3%	59.6%	59.7%	52.9%	55.0%
Missouri	47.3%	47.0%	50.0%	50.8%	51.6%	53.0%	53.4%
Montana	66.7%	63.2%	63.7%	64.3%	63.5%	64.1%	65.4%
Oregon	55.8%	68.1%	61.0%	61.6%	61.2%	60.7%	62.5%
Virginia	48.0%	56.5%	56.4%	57.5%	57.4%	57.8%	58.1%
Washington	64.3%	65.2%	68.3%	68.9%	67.2%	66.1%	67.3%
National Average	59.9%	59.0%	59.6%	59.8%	59.9%	60.0%	60.8%

Figure 6: Arrearage Collections Performance Measure

Source: Table 10, CSE FY 2005 Preliminary Data Report (no assumption is made regarding data reliability); Table 12, CSE FY 2006 Preliminary Data Report (no assumption is made regarding data reliability). Measures for 2000 – 2004 were calculated using data reported in the OCSE FY 2004 Annual Report to Congress. All measures have been rounded to the nearest thousandth.

Figure 6 also reveals that in FY 2006 there was variation within and among the legal systems on arrearage collections performance. Of the 11 states studied, four scored below the national average. Those states included Indiana (judicial) and three administrative process states (Maine, Missouri, and Virginia).

CSPIA COST EFFECTIVENESS RATIO

	2000	2001	2002	2003	2004	2005	2006
Judicial							
Indiana	7.69	6.34	7.80	7.91	7.04	8.53	8.92
Judicial with Admin							
Texas	4.96	5.23	5.41	5.63	5.95	6.81	7.53
Quasi-Admin.							
Colorado	3.23	3.58	3.66	3.22	3.55	3.68	3.94
South Dakota	6.95	7.72	7.59	7.80	7.49	7.76	8.23
Administrative							
Alaska	3.89	4.14	4.49	4.24	4.50	4.54	4.27
Maine	4.90	6.01	4.28	4.99	4.35	4.27	4.16
Missouri	3.37	3.81	4.63	4.95	5.40	5.41	5.58
Montana	3.58	4.22	4.10	3.63	3.94	4.02	4.19
Oregon	5.54	6.63	5.85	5.60	6.17	5.93	5.86
Virginia	5.0	6.12	6.34	6.52	6.33	6.52	6.58
Washington	4.53	4.55	4.95	4.54	4.52	4.74	4.41
National Average	4.23	4.21	4.13	4.32	4.38	4.58	4.58

Figure 7: CISPA Cost-Effectiveness Ratio

Source: Table 24, OCSE FY 2004 Annual Report to Congress; National Box Score and Table 10 from the FY 2005 Preliminary Data Report (no assumption is made regarding data reliability); National Box Score and Table 12 from the FY 2006 Preliminary Data Report (no assumption is made regarding data reliability)

Figure 7 also reveals a variation within and among the legal systems on the cost-effectiveness ratio. In FY 2006, of the 11 states studied, six states scored above the national average and five scored below the national average. The two states characterized as highly judicial (Indiana and Texas) surpassed the national average, as did South Dakota (quasi-administrative). The states scoring below the national average included Colorado (quasi-administrative) and four administrative process states (Alaska, Maine, Montana, and Washington).

In conclusion, a review of states conducted for purposes of this white paper did not reveal that one type of legal system was “better” than another. This finding is consistent with that made in the 2002 Lewin report. Of the states studied for this report, the only state that scored above the national average in FY 2006 in each of the five federal performance measures was South Dakota, a quasi-administrative state. Three states exceeded the national average in four of the performance measures: Texas (judicial with administrative), Montana (administrative), and Washington (administrative). Four states met or exceeded the national average in three of the performance measures: Alaska (administrative), Maine (administrative), Oregon (administrative), and Virginia (administrative). Two states scored below the national average in three performance measures: Colorado (quasi-administrative) and Missouri (administrative). Only one state

scored below the national average in four of the five performance measures: Indiana (judicial).

VIII. Alternatives to Current Judicial Process

The traditional judicial model for the establishment of child support obligations requires the preparation of petitions and motions, the filing of pleadings with the clerk of court, the setting of a court date prior to knowledge of whether service will be successful, personal service, a hearing in which attorneys appear on behalf of the child support agency, and entry of an order by a judge. Indiana follows such a model. As the number of IV-D cases has increased, the courts in many Indiana counties have lacked the resources to keep up with the demand for court time. Some county prosecutor offices report waiting up to nine months for a court date. The delay in a court date means a delay in children receiving the support they need.

With the enactment of the Child Support Performance and Incentive Act of 1998, States' receipt of financial incentives is directly tied to their performance in five key areas: paternity establishment, the percentage of cases where support has been established, the percentage of cases where there is a collection on current support, the percentage of cases where there is payment toward arrearages, and cost-effectiveness. A review of Indiana's performance reveals that it is below the national average on every measure but cost-effectiveness. Now may be an appropriate time to identify systemic changes that would improve the processing of child support cases in Indiana.

This section of the white paper proposes options and identifies alternatives that Indiana may wish to consider. The alternatives assume that parents will always have the right to seek a review in court at some stage in the process; administrative procedures are always a supplement to, not a replacement of, judicial review. The alternatives are also set forth as proposals for consideration, rather than recommendations. The review conducted for this white paper took place over a month. Agency representatives willingly provided information about programs for which they justifiably feel pride. However, with the exception of a review of state laws and regulations, there were no site visits or independent review of state data to verify the information provided. Interviews in Indiana were limited to state and county child support managers. There were no interviews with other important stakeholders such as judges. Without a more intimate knowledge of the Indiana program, it would be inappropriate to make recommendations. However, the study did reveal a wealth of "best practice" suggestions from knowledgeable agency representatives from throughout the country and identified various models and approaches that Indiana may wish to consider as it explores the use of administrative processes in child support cases.

Options for Consideration

A number of administrative states studied for this paper enacted administrative child support procedures at the same time as they implemented their Title IV-D programs. The processes and program therefore "grew" together. In some of the states, administrative processes were enacted over time, largely in response to federal funding requirements

and an overburdened judiciary. Most of these states began with administrative enforcement and then moved to administrative establishment.

Indiana is at a different juncture. It has a mature IV-D program that has developed around a prosecutor and judicial model. Yet it also has in place laws authorizing all of the administrative enforcement techniques of PRWORA. Based on Indiana's poor performance on the federal benchmarks, one can argue that there is sufficient information upon which a decision could be made to move aggressively toward a system less reliant on court time. On the other hand, one can assert that there is insufficient information about where the barriers are to efficient performance; before an aggressive move to "fix something," one needs more objective data about "what" to fix. Between these two positions are intermediate steps the state may wish to consider.

If Indiana is not satisfied with the current performance of its Child Support Program, several options for consideration emerge from this study.

One approach is to conduct a comprehensive study of the existing system and then make decisions.

Evaluate Existing Procedures for Processing IV-D Cases

- Conduct a study of the variances among county prosecutor offices regarding paternity establishment, support establishment, enforcement, and modification of support.

Regional field consultants contacted for this paper identified numerous variances among the Indiana county prosecutor offices in the types of pleadings filed, service of process, use of stipulated agreements, and the use of administrative enforcement procedures currently authorized under Indiana law. In order to determine where improvements to the program are most needed, the agency may find it helpful to first document what these variances are. Advantages of a study include the identification of barriers to effective processing, identification of best practices, and identification of areas where consistency is needed. Disadvantages of a study include the time involved and the cost in terms of actual dollars and resource time.

- Conduct a study of the judicial processes used to establish paternity, establish support, enforce support, and modify support in IV-D cases.

CSB Regional Field Consultants contacted for this paper identified numerous variances in how courts in different Indiana counties process IV-D cases. Especially troublesome was the identification of practices that seem to be at variance with state and federal law, e.g., the failure to recognize paternity acknowledgments as legal determinations of paternity, the need to obtain judicial signatures on income withholding orders. Any such study should elicit input from all of the relevant stakeholders – the county clerks, the court, prosecuting attorneys, the Sheriff's Office, the Child Support Bureau, and the private bar. The obvious advantage of a study is that it provides empirical information, rather than anecdotal information. By documenting the associated time to complete each activity in Indiana's judicial

process, a study would also help identify any unnecessary delays in the current process. The resulting report would allow for a more informed consideration of possible alternatives for supplementing judicial resources. The disadvantage of a study is the time and cost it requires.

Indiana may wish to consider the measured approach taken by Florida. As late as 2002, the Lewin Group scored Florida a 14 on its taxonomy scale, qualifying it as a “highly judicial” state. Like Indiana, Florida had a mature IV-D program and had enacted administrative enforcement procedures in compliance with PRWORA. Yet the agency was not pleased with its performance on the federal measures. As the result of a planned incremental process, Florida has now implemented administrative procedures throughout the state for its IV-D caseload.

The Office of Program Policy Analysis and Government Accountability, an office of the Florida Legislature, recommended a study of Florida’s judicial processes in child support in a 1993 report.⁵⁹ The Judicial Alternatives Study Commission also made this recommendation in a 1996 report. As a result of such recommendations, in 2000 the Florida child support program, in conjunction with the Office of State Courts Administrator, initiated a study to identify and address causes of delays in the judicial establishment and modification of IV-D cases. The multi-disciplinary workgroup included a judge, hearing officers, a court administration professional, child support agency staff, a clerk of court, a representative of the Office of the Attorney General, a private legal service provider, a representative of the Family Law Section of The Florida Bar, and a sheriff. The study’s purpose was to examine the processes between the legal referral for establishment or modification of an order to the actual issuance of the order in intrastate cases. The study did not consider an administrative process. The study required the development of a collection model, the pulling of sample cases, and data collection. Based on the study results, the Florida legislature decided to explore incorporating more administrative methods into Florida’s child support establishment process.

Find Ways to More Effectively Implement Existing Laws

- Convene a multi-disciplinary workgroup to identify and resolve barriers to implementing existing administrative processes.

CSB Regional Field Consultants voiced frustration about the inability to effectively implement existing administrative processes. A workgroup composed of various stakeholders would provide a forum for discussing problems from various perspectives. For example, anecdotal information is that a number of courts are not treating paternity acknowledgments as legal determinations of paternity. Discussing this issue in a workgroup would provide more information about the extent and cause of the problem. Are judges aware of the law? Are judges concerned with whether the forms provide sufficient information about parties’ rights and responsibilities? Does the problem arise in particular types of cases, such as minor parents, or cases where there is an acknowledgment but a different man is the presumed father? Are there concerns about the process in which forms are signed? By identifying concerns,

one can determine whether the most effective resolution is through training, modification of the legal forms, modification of outreach material, etc.

- Provide education programs to the judiciary, deputy prosecutors, and agency caseworkers.

In order to ensure current laws are being appropriately implemented, it may be useful to conduct refresher training to various stakeholders on existing expedited procedures, such as the effect of a paternity acknowledgment and administrative enforcement methods.

Conduct a Pilot

- Consider legislative authorization of a pilot study in one or more counties to determine whether incorporating more administrative processes into the resolution of child support cases, especially the establishment of a support order, would improve the delivery of services to parents and result in money reaching children faster. Require a report back to the legislature regarding specified performance outcomes.

Because Indiana is such a judicial state, the various stakeholders may want a closer examination of administrative processes before deciding whether to enact such processes statewide as a way to supplement judicial resources. Any such study should identify performance outcomes that will be measured, such as timeframes and compliance with administrative orders. Implementing and evaluating a pilot does not necessarily require several years of work. Again, an example for consideration is Florida.

As a result of its 2000 judicial study, the Florida legislature was interested in examining administrative processes more closely but was not prepared to enact and implement administrative processes statewide. The 2001 Florida legislature authorized the Department of Revenue (the umbrella agency of the Florida child support agency) to conduct a pilot study to help determine whether incorporating an administrative method to establish child support orders would improve Florida's child support establishment process. Volusia County was the pilot county. The legislature directed the Department to develop performance outcomes to measure the effectiveness and cost-efficiency of the pilot program as compared to the judicial process. In order to implement the pilot, the Department of Revenue, Child Support Enforcement Program developed partnerships with the County Clerk of Court, local judges, the County Sheriff's Office, and the local legal service provider. Each partner participated in decisions regarding activity steps, procedures, and forms. The Division of Administrative Hearings worked with the Department of Revenue to establish a new procedure for handling cases in which the noncustodial parent requested a hearing by an administrative law judge. As required by the legislature, the Department submitted a report one year later (June 30, 2002) on the implementation of the pilot program.⁶⁰

Because preliminary results of the pilot showed that the administrative support procedure resulted in support orders being established quicker than the court process⁶¹ with a similar compliance rate, the 2002 Florida legislature authorized the Department of Revenue to adopt rules for statewide implementation of administrative proceedings to establish child support obligations. Implementation was phased in. The Department began processing cases administratively in October 2002 and by November 2003 had completed implementation in all counties. The legislation required the Department to submit a report on the statewide implementation, which was submitted in July 2004.⁶² It also required the Office of Program Policy Analysis and Government Accountability to conduct an evaluation of the statewide implementation of administration processes; this was submitted in September 2006.⁶³

Implement More Administrative Processes, without a Pilot

Indiana may decide to enact more administrative processes, without a pilot. In doing so, the legislature needs to address various services that a child support agency provides.

- **Paternity Establishment**
All of the states studied for this white paper employ some type of expedited process for determining paternity in cases where there is agreement to paternity and support. Several of the administrative states also use administrative processes to establish paternity in contested cases. Based on Florida's experience, the Chief Legal Counsel for Florida's child support program recommends that a state transitioning to a more administrative model initially focus on agreed upon paternity cases. Paternity establishment in contested cases raises complex issues and requires decisions on legal forms, procedures, training, and implementation: "A state will have enough decisions to make on support establishment. I don't recommend that they bite off paternity also."
- **Support Establishment**
All of the states studied for this white paper employ some type of expedited process for determining the support obligation where the parties reach agreement on the support amount. In contested cases, the more judicial states – Colorado, South Dakota, and Texas – provide for a hearing before a quasi-judicial official. The administrative states provide for an administrative hearing before an ALJ or administrative hearing officer, followed by the right of a party to request judicial review. Based on anecdotal information, compliance does not appear to be affected by whether an order is administrative or judicial. It is also difficult to say that one process is always faster than the other. At a minimum, Indiana should consider enacting into law a consent process that allows for ratification of an agreed upon child support order without the need for a hearing or the appearance of parties. Texas is an example of a judicial state that has enacted such a process. There are also examples among the states surveyed of more expansive administrative establishment procedures. For example, Indiana could decide to authorize its child support agency to issue administrative notices with a proposed support amount; if a party does not respond to the notice within a specified time period, an order will be established based upon the amount in the notice.

- **Review and Adjustment**
The states surveyed use a similar process for review and adjustment requests as for establishment of an initial order. However, the states do not administratively modify a judicial order.
- **Enforcement**
All states surveyed have enacted, and are implementing, laws authorizing administrative enforcement pursuant to the federal funding requirements of PRWORA. A remedy in which states have flexibility regarding whether to use a judicial or administrative process is license suspension. A 1997 study by the DHHS Office of the Inspector General concluded that the administrative process was much more effective than the judicial process in implementing license suspensions: “the administrative process generally targeted more cases, had more collections, and took less time to suspend licenses. Also, we identified the following notable practices that enhanced the programs we reviewed: (1) targeting cases on a periodic basis, (2) using specific computer fields to track related information, (3) using automated follow-up procedures, (4) having a common identifier to match IV-D with other State records, and (5) using license suspension when deemed necessary instead of using it as a last resort.”⁶⁴ Indiana currently uses an administrative process for license suspension.

Decide upon Key Elements that Make a Process Either More Judicial or More Administrative

- **Authority of agency**
A process becomes more administrative if the child support agency has authority to initiate a support action by serving parties with an administrative notice rather than requiring the agency to initially file pleadings with the court, which the clerk then serves. It is also becomes more administrative to the extent administrative decisions do not require the signature of a lawyer. For example, Missouri law provides the following:

Any administrative order or decision of the division of child support enforcement filed in the office of the circuit clerk of the court shall not be required to be signed by an attorney, as provided by supreme court rule of civil procedures 55.03(a), or required to have any further pleading other than the director's order.⁶⁵
- **The decision-maker**
If a decision is made to supplement judicial resources, then the next decision is whether the State wants to employ a quasi-judicial process with a referee or similar quasi-judicial decision-maker. Among the states studied for this paper, Colorado and South Dakota provide an example of referees used in a quasi-judicial role. Alternatively, the State could employ an administrative hearing officer or administrative law judge who adheres to the Indiana Administrative Procedure Act. The seven administrative states have taken this approach.

If Indiana decides to supplement judicial resources with administrative hearing officers or administrative law judges, the next decision is to address the supervision and accountability of such decision-makers. Will the hearing officer be an employee of the child support agency? Of the umbrella agency? Of a separate agency such as the Office of Administrative Hearings? The administrative process states studied for this white paper vary in who employs the administrative hearing officer/law judge. The most important factor is to ensure that the public, lawyers, and the court know that the hearing officer is independent and will render an impartial, fair decision.

Indiana currently uses an administrative process to resolve challenges to license suspension and the activation of income withholding. Hearings are conducted before an administrative law judge who is appointed by the director of the Division of Family and Children. At one time that Division was the umbrella agency for the Child Support Bureau but, under current organization, it is now a totally separate agency from child support.

If the legislature decides to supplement judicial resources with quasi-judicial or administrative decision-makers, the legislature also needs to address the qualifications of the decision-makers.

- The level of personal contact between parents and the agency
The policy decision on this issue will impact operational decisions regarding the timing of collecting income information in an establishment case and the use of negotiation conferences.

The states studied for this paper vary in whether they send a letter to the parents seeking financial information prior to serving the parents with a formal Notice; whether they require parents in response to a Notice to complete and return a financial questionnaire; or whether they inform parents that if they contest a proposed support amount in a notice, the parents need to contact the agency within a specified time period.

The states also vary in whether they offer parents the opportunity to respond to a Notice by requesting a negotiation conference, whether in the Notice they require attendance at a scheduled conference, or whether they offer any negotiation conference at all. At least one state studied, Colorado, has recently studied how to reduce its number of default child support orders and thereby hopefully increase compliance because orders will be based on more accurate income information. The Colorado agency representative recommends a proactive outreach to parents as a “best practice.” The grant study has found that noncustodial parents appreciate receiving a letter informing them of their support obligation and the process prior to being served with a formal notice. Through its use of negotiation conferences, the agency also believes that study results will show a decrease in the default order rate and an increase in compliance.

- Forms and service of process

With regard to paternity and support establishment, the states studied for this paper send informational letters by regular mail. Formal notices, summons, and proposed orders are usually served on the noncustodial parent either by certified mail, return receipt requested, or by personal service. Where state law authorizes service by either means, the administrative states are more likely to use certified mail, return receipt requested. Some states require personal service for paternity establishment. Sometimes a state uses regular mail for subsequent communication after service of the initial Notice. For example, several states studied notify parties of genetic test results by regular mail.

Where the custodial parent is the IV-D applicant, it appears to be a common practice that the agency sends the custodial parent, by regular mail, copies of documents that were served on the noncustodial parent or alleged father. One state's law does not require service on the custodial parent at all, but the agency does not recommend that approach.

The type of notice required to initiate enforcement and service of process requirements vary among the states depending upon the enforcement sought.

- Authority of caseworker

In most judicial states, pleadings must be signed by an attorney and only an attorney can represent a party in a court hearing; if a non-lawyer takes such action, it is considered an unauthorized practice of law. There is at least one judicial state, where state law authorizes non-attorney child support employees to perform what are traditionally legal roles. Under Vermont law:

(a) Any person or other legal entity, including the state, shall be entitled but not required to be represented by an attorney before a magistrate. Nonattorney employees of the office of child support who have been duly qualified by the office of child support may sign complaints and motions, and may participate in child support hearings before a magistrate, including those arising under section 5533 of Title 33 subject to the conditions in subsections (b) and (c) of this section. Such participation shall not be considered the unauthorized practice of law.

(b) Participation in a proceeding shall consist of:

(1) presentation of current and material evidence relative to both parents' income and resources;

(2) computation of parental support obligations based upon child support guidelines, and recommendations for any deviations from that amount after consideration of the best interests of the child;

(3) relevant supporting documentation and legal justification for the recommendation.

(c) A current roster of qualified office of child support staff shall be furnished to the court by the office of child support. Such staff may be denied the right to participate in child support proceedings upon notice to the office of child support from the court administrator. The notice shall indicate the basis for the decision.⁶⁶

Maine, which is an administrative process state, has a statute authorizing its child support workers to appear in certain judicial proceedings without running counter to the prohibition against practicing law without a license. Since 1998, there has been a Family Division within the Maine District Court, in which the judicial officers are magistrates, rather than judges. The Family Division provides an expeditious forum for child support actions in which the Division appears. In the Family Division of the District Court, the designated enforcement agents appear before Magistrates as a matter of course in case management conferences, status conferences, and mediation conferences in divorce and parental rights and responsibilities actions. The only proceedings in which designated agents can represent the Maine child support agency before district court judges are Appear and Disclose proceedings, which are enforcement proceedings. The statute provides:

The commissioner may designate employees of the department who are not attorneys to represent the department in District Court in a proceeding filed under this section. A designated employee may prepare and sign the motion as required under subsection 9. The commissioner shall ensure that appropriate training is provided to all employees designated to represent the department under this subsection.⁶⁷

In states using an administrative process for establishing and enforcing support orders, the legislature has granted the executive agency authority to issue notices and orders. The statutes do not usually spell out how the agency carries out that authority; instead the agency is authorized to promulgate rules and regulations to implement its authority and responsibilities. In the administrative states studied for this white paper, caseworkers have authority to negotiate consent orders with parties, impute income based on state law and agency policy, calculate support amounts based on state guidelines, prepare administrative notices, prepare consent orders, and present information on behalf of the agency at administrative hearings. In some of the administrative states studied, the caseworker has authority to deviate from the guidelines based upon statutory permissible deviation factors. In other of the states, an agency attorney must approve such deviation.

- Time period for responding to administrative notice
All of the states studied for this paper, including the quasi-administrative states and Texas, which is a judicial state, provide a time period in which parties must respond to an agency notice. In the absence of a response, the agency has authority to take

certain action, including the generation of an order (which, in some states, must be approved by the court). The time period varies from 10 to 30 days. The most common time period is 20 days.

- Use of default orders when a party does not respond to an administrative notice, after proper service
Indiana should evaluate the extent to which it wants to incorporate default orders into its expedited child support processes. All of the states studied for this paper, including the more judicial states, authorize the agency to prepare a support order if there is no response to an agency notice. In most of the administrative states, the agency may issue the order. In Montana, a default order must be signed by an administrative law judge. In the quasi-administrative state of South Dakota, the agency submits the administrative notice which includes a proposed support amount, proof of service, and an application for an order of default to the court. In the judicial state of Texas, the agency prepares a non-agreed order which it files with the court, along with a Petition for Confirmation of the order; if the parties do not request a hearing on the order, after service, the court is required by law to sign and approve the non-agreed order.

If the Indiana legislature authorizes the child support agency to administratively issue notices and prepare orders when there is no response to the notice, the legislature and agency need to decide upon the content of the notice. The notice must include clear information about what the party is required to do in response to the notice, and what the impact is if the party does not take such action. In many administrative states studied for this paper, the notice in an establishment case contains a proposed support amount. The notice informs the parties that if they want to object to the proposed amount, they must take certain action within a specified time period. Because, in some states, the lack of a response could mean consent, some administrative states have chosen to caption the resulting order as a final order rather than a default order. Their decision was based in part on input from customers who did not want their children to think they had intentionally ignored agency action, which they felt was suggested by the word “default.”

- Decide whether a party can reopen or set aside a default order
If the Indiana legislature authorizes the child support agency to administratively issue notices and prepare orders when there is no response to the notice, the legislature needs to decide whether the law will provide a limited time within which the non-responding party may move to reopen or set aside the order. In several of the states studied, the only way a party can seek to reopen a default order is through a Rule 60(b) motion. In other states, by statute the party has a certain time period in which to seek to reopen or set aside the order; in this study, that time varied from 10 days to one year. In states with such statutes, there is often a requirement that the party show good cause for the failure to timely respond. An example is Montana’s law:

If the department does not receive a timely filed written denial of paternity or if an alleged father fails to appear at a scheduled hearing or for a

scheduled paternity blood test, the department may enter an order declaring the alleged father the legal father of the child. The order will take effect within 10 days after entry of the default unless the alleged father before the 10th day presents good cause for failure to make a timely denial or for failure to appear at the hearing or to undergo paternity blood testing.⁶⁸

- Challenge process

If Indiana decides to enact more administrative processes to establish a support order, the legislature needs to determine what will happen when a party objects to an administrative notice. For example, in some states studied during the development of this white paper, the objecting party is required to attend a negotiation conference. In other states, the party notes his or her objection by requesting an administrative hearing.

- Format for contest

States that use processes that are more administrative than judicial usually offer parties several ways to participate in a hearing – in person, by telephone, and via videoconferencing. Of the states studied for this paper, Montana is the only state that requires parties to initially participate in an administrative hearing by telephone:

(2) The notice of hearing and scheduling order shall:

(a) set the date, time and place for the hearing;

(b) set the date by which the witness and exhibit list must be filed with the OALJ and by which a copy of the list must be served on all other parties;

(c) set the date by which exhibits must be exchanged with other parties if exhibits are not served as attachments to the witness and exhibit list;

(d) set the date by which a party must request discovery or request subpoenas for the attendance of witnesses or the production of documents;

(e) inform the party that the hearing will initially be held by telephone conference;

(f) if the hearing is by telephone conference, inform the party that before the hearing record is closed, the party will have an opportunity, at the party's request or upon a showing that a party's case was prejudiced by the lack of an in-person hearing, to request a de novo in-person hearing;

(g) give the party directions for the conduct of telephone hearings;

(h) direct the party to provide a telephone number at which the party will be available for the hearing and further direct that if the party does not provide the number or fails to be at the number when called for the hearing, the ALJ may either enter the party's default or proceed with the hearing in absentia; and

(i) inform the party that if the party does not have a telephone available for a telephone hearing, at the party's request, a telephone will be

made available to the party at the nearest regional CSED office or at the public assistance office in the county where the party resides.⁶⁹

If Indiana decides to employ administrative hearings to resolve contested establishment cases, it also needs to address the formality of the hearings.

All of the states contacted require that there be a record of the administrative hearing.

- **Review process**
All of the states contacted provide the parties a right to object to an administrative decision by seeking review at the trial court level. States vary as to whether the court conducts a *de novo* hearing or conducts a review based on the record of the administrative proceeding. Oregon based its decision to have the circuit court conduct a review *de novo*, rather than on the record, in order to provide parents the opportunity to present their facts to a judge.
- **Jurisdiction over nonresidents**
All of the states contacted for this white paper process interstate cases the same way as they process intrastate cases.

IX. Best Practice Recommendations

Agency representatives in the ten states studied for this white paper are proud of their programs and eager to share what they consider to be best practices or recommendations. The following is a list of some of the recommendations they made during interviews, for any state that is considering augmenting judicial resources through more administrative processes. For a detailed discussion of each of the state recommendations, see the state summaries contained in the Appendix.

- Recognize that making the transition to an administrative process is a big leap of faith. Do everything you can to ensure that the process incorporates due process protections.⁷⁰
- Ensure that the judiciary is comfortable with the due process protections provided throughout the administrative process. It is important for the court to know that there is another forum that will fairly resolve child support cases.
- Make sure parents understand the due process protections. Ensure they know that they always have the right of judicial review.
- Work closely with the prosecutors and agency attorneys to ensure they are comfortable with the due process protections.
- Ensure that the process provides for lots of contact between a well trained caseworker and the parties – via phone, letter, in-person meetings. The administrative process is most effective when both parties are involved in the process.
- Conduct proactive outreach to the parties, such as mailing a parent a letter about his or her support obligation before serving the person with a formal notice.
- Consider the value of including in-person negotiation conferences within the administrative process.

- Develop a process where the response time to a citation or notice issued in an administrative or quasi-administrative process is the same as it is in the judicial process.
- Decide whether a non-lawyer caseworker may sign administrative notices and participate in administrative hearings.
- Ensure the statute is clear regarding the service of administrative notices and orders.
- Address the administrative modification of judicial orders.

Agency representatives had the following suggestions for the child support agency that is implementing a new administrative process:

- Ensure that the agency adheres to the due process protections as set forth in legislation and agency regulations. Do not abuse your administrative authority.
- Ensure that the process is implemented uniformly statewide. Do not allow county variances.
- Develop standard forms and procedures. Develop and implement a formal process for implementing forms and procedures that are used by all program participants.
- Develop forms that are easily understood. Determine the reading level of your audience and develop the forms accordingly.
- Place the forms on line so that they can be easily updated. Make sure that the programmers know something about the child support business. Also make sure there is someone who can translate programming language into business user talk. A best practice approach is to conduct a full business modeling process in the early planning stages so people understand not just WHAT form needs to be created online, but WHY it is needed, WHO uses it, and HOW it might be connected to other forms or processes.
- If the administrative or quasi-administrative process includes negotiation conferences between parents and the agency, be prepared to manage the large number of “no shows.”
- If parties are able to participate in administrative hearings by telephone, consider any cultural issues related to telephonic hearings. A telephone hearing requires active participation by the parties. In some cultures, parties – especially women – are reluctant to “speak up” on the phone.
- Make sure agency caseworkers are well trained.
- Coordinate with the Supreme Court, the Office of Attorney General or equivalent legal office, and the child support agency to ensure there is ongoing dialogue about how the process is being implemented.
- Educate the court, the private bar, agency attorneys, and agency caseworkers about the administrative process.

For any state that has decided to enact legislation authorizing administrative hearings, the agency representatives made the following suggestions:

- It is probably best to have the administrative law judges or hearing officers be part of an agency that is separate from the child support agency to avoid the perception of partiality.
- Address the format of administrative hearings, including the ability to conduct telephonic hearings.
- In drafting statutes governing administrative procedures, address the responsibility of the administrative law judge or hearing officer when a party fails to appear at the scheduled administrative hearing. Does the legislature want to require the administrative law judge or hearing officer to enter a default order that conforms to the support amounts stated in the Notice of Financial Responsibility? Does the legislature want the administrative decision-maker to have discretion to enter an order that amends the Notice?
- In implementing legislation, require the administrative decision-maker to make findings of fact and conclusions of law.
- Ensure that a record is made of the administrative hearing so that it is available if a party requests judicial review of the decision.
- Have the administrative support order mirror a judicial support order to the greatest extent possible, as far as directives to provide support in a certain amount, to comply with the order's terms, to provide updated address information, etc.

Conclusion

This white paper summarizes a variety of approaches that states have taken to handle child support cases in a streamlined manner. Should Indiana decide to enact more administrative child support processes, the states studied for this white paper offer models from a “pure” administrative approach to a judicial approach that incorporates an administrative consent process. Amidst the variances, there are also common elements. All of the states studied, including the judicial state of Texas, have developed establishment processes in which:

- The child support agency has authority to administratively initiate an action.
- Legal documents to initiate the action (i.e., Notice of Child Support Review) do not require an attorney signature.
- Legal pleadings are not initially filed with the court. The initial administrative notices are only required when they are part of the record for a court hearing (necessary in some states when there is no consent) or for any judicial review of the administrative decision.
- The child support agency has authority to seek agreement to a proposed support amount based on child support guidelines, either expressly through negotiation or implied through the lack of a response to a proposed support amount. The variances among the studied states are whether the agency has authority to enter a consent order or default order, or whether such orders require signature by an administrative or judicial officer.

- The child support agency has authority to issue administrative subpoenas and to require individuals, businesses, entities, etc. to provide certain information upon request.

The most critical element common to all models is due process. Each state ensures that parties receive notice, have an opportunity to challenge agency action, and can seek review by a court. Agency representatives stressed the importance of providing these due process protections. States also invest time to ensure that stakeholders – the court, parents, caseworkers, prosecuting attorneys, and the private bar -- understand these protections.

The information and suggestions presented in this paper are meant to generate discussion among the stakeholders in Indiana's child support program. Once there is consensus on where improvements are needed, the legislature can decide what approaches may be most appropriate for Indiana.

¹ Karen Gardiner, The Lewin Group, John Tapogna, ECONorthwest, & Michael Fishman, The Lewin Group, Administrative and Judicial Processes for Establishing Child Support Orders: Final Report, Prepared for the Department of Health and Human Services, Office of Child Support Enforcement (June 2002). On-line: <http://www.lewin.com/NR/rdonlyres/0349FEA1-11C3-4FC3-9494-8BE7113BFEFB/0/jun2002judicial2609.pdf>.

² Essentials for Attorneys in Child Support Enforcement, Third Edition, produced by the American Bar Association and Tier under Contract #105-00-8306 for the Department of Health and Human Services, Office of Child Support Enforcement, August 2002, p. 81.

³ P.L. No. 93-647 (1975), codified at 42 U.S.C. §§ 651 *et seq.*

⁴ P.L. No. 98-378 (1984)

⁵ 42 U.S.C. § 666(a)(2).

⁶ 45 C.F.R. § 303.101(a). This regulation was revised in 1994 to delete the requirement that the presiding officer could not be a judge.

⁷ P.L.No. 100-485 (1988).

⁸ 42 U.S.C. § 666(a)(10).

⁹ 45 C.F.R. § 303.8(b)(3)(i).

¹⁰ P.L. No. 103-66 (1993).

¹¹ 42 U.S.C. § 666(a)(5)(C).

¹² P.L. No. 104-193 (1996), as amended by the Balanced Budget Act of 1997, P.L. No. 105-33 (1997)).

¹³ 42 U.S.C. § 666(a)(5)(C)(i).

¹⁴ 42 U.S.C. § 666(c)(1)(A).

¹⁵ 42 U.S.C. § 666(c)(1)(B).

¹⁶ 42 U.S.C. § 666(c)(1)(D).

¹⁷ 42 U.S.C. § 666(c)(1)(E).

¹⁸ 42 U.S.C. § 666(c)(1)(H).

¹⁹ 42 U.S.C. § 666(c)(1)(F).

²⁰ 42 U.S.C. § 666(c)(1)(G)(iv).

²¹ 42 U.S.C. § 666(c)(1)(G).

²² P.L. No. 105-200 (1998).

²³ 42 U.S.C. § 658a.

²⁴ “The Commission did not find enough evidence or research to mandate a particular system.” U.S. Commission on Interstate Child Support, *Supporting Our Children: A Blueprint for Reform*, (US Government Printing Office 1992); “Since there are no clear-cut answers on effectiveness, will the study [Lewin Study 2002] be useful to practitioners? It can be, if they are willing to look beyond simple answers like whether judicial or administrative processes are “right” or “better.” Sherri Heller, Commissioner, Office of Child Support Enforcement, DCL-03-15, May 23, 2003.

²⁵ *Supra*, note 1.

²⁶ The Lewin report emphasizes that more points does not mean that a state is “better” than another; it simply means it is more judicial.

²⁷ National Child Support Enforcement Association (NCSEA), *Interstate Roster and Referral Guide* (1999); 1997 unpublished West Virginia Bureau for Child Support Enforcement study of state administrative processes; Canada Department of Justice, *Expedited Child Support: An Overview of the Commonwealth Countries’ and United States’ Procedures for Establishing and Modifying Child support* (2000). On-line: <http://www.canada.justice.gc.ca/en/ps/sup/cspo/expedited2.html>; Victoria Williams, “A Comparative Analysis of Minnesota’s Administrative Process.” Denver: Policy Studies, Inc. 1993.

²⁸ Twenty-one states replied. About half had some type of change to their state score.

²⁹ See the Child Support Performance and Incentive Act of 1998, *supra* note 22, (paternity establishment, cases with support orders established, cases with collections on current support, cases with payment on arrearages, and cost effectiveness).

³⁰ *Supra*, note 1, pp. 3 – 4.

³¹ *Supra*, note 1, pp. 2 – 3.

³² The law provides a 60 day period for a person to rescind his or her acknowledgment. In cases cited by regional field consultants, that time period has not been a factor in the court’s refusal to accept an acknowledgment as a determination of paternity.

³³ See also Policy Studies Inc., “A Comparative Analysis of Minnesota’s Administrative Process,” submitted to the Minnesota Office of Child Support Enforcement, June 2, 1993. The common features identified by Victoria Williams in that analysis are similar to the features identified in this study more than 10 years later.

³⁴ Some of the states studied for this white paper refer to such orders as default orders; others call them final orders so as not to suggest that the parties have ignored agency action. In most of the administrative states studied, the agency has authority to enter such orders. In Montana, the agency prepares the default order but it must be signed by an administrative law judge.

³⁵ Several administrative states contacted for this paper docket the administrative order with the court in order for it to be fully enforceable by judicial remedies. Montana requires judicial approval of an administrative order that proposes a modification to a court order.

³⁶ Alaska, Maine, Montana, Oregon, and Virginia.

³⁷ Alaska and Oregon.

³⁸ Where the agency proceeds with support establishment on the basis of a presumption of paternity, there is no final ALJ order declaring that the man is the legal father.

³⁹ Alaska.

⁴⁰ Maine and Oregon.

⁴¹ For the purpose of this discussion, it is assumed that a child support establishment case is one where paternity is not at issue.

⁴² Montana, Oregon, Washington.

⁴³ Alaska, Maine – 30 days; Missouri, Montana, Oregon – 20 days; Washington – 20 days if served in state, 60 days if out of state); Virginia – 10 days.

⁴⁴ In Maine, a district supervisor signs the proposed order. In Oregon, a case manager signs the default order.

⁴⁵ Montana.

⁴⁶ Maine, Missouri, Virginia.

⁴⁷ The exception in Montana is if the administrative order is a modification of a judicial order. In that case, the administrative order acts as a proposed order, which must be filed with and ratified by the court.

⁴⁸ Alaska, Oregon, Virginia, Washington.

⁴⁹ Alaska, Montana, Virginia.

⁵⁰ Maine, Washington.

⁵¹ Oregon.

⁵² Maine, Montana, Oregon, Virginia.

⁵³ In Montana, any appeal of an ALJ decision to district court is heard “on the record.” However, parties can move to have the record supplemented. If there is such a motion, the case goes back before the ALJ to hear additional evidence.

⁵⁴ See *Chastain v. Chastain*, 932 S.W.2d 396 (Mo. 1996); *Hansen v. Hansen*, Case Number SC88242, Missouri Supreme Court, issued 6/26/2007. See also *State of Iowa, ex rel. Sara Allee v. Gocha*, 555 N.W.2d 683 (Iowa 1996) in which the Iowa Supreme Court upheld the child support modification procedures in Iowa.

⁵⁵ See *Seubert v. Seubert*, 2000 Mt. 241, 13 P.3d 365 (2000). See also *Holmberg v. Holmberg*, 588 N.W.2d 720 (Minn. 1999).

⁵⁶ In October 2004 Colorado’s CSE Program received a federal grant from OCSE to minimize the use of default orders and establish appropriate order amounts. It focused on orders established when the non-custodial parent failed to appear for a negotiation conference. The hope was that by lowering default orders, there would be more noncustodial parent involvement, an increase in support orders established, and a higher number of obligors paying their child support. In May 2005, Colorado’s CSE began testing a variety of interventions or procedures aimed at reducing the number of default orders: Enhanced personal service techniques, simplified legal notices, reminder calls and direct calls and letters to non custodial parents, multiple notices about hearings and legal proceedings, and making default orders provisional so that they could be changed if actual income information was presented within 10 days after the administrative process negotiation conference. Through these procedures, the default order rate in the experimental group fell to 14%, compared to a statewide total of 33% in 2004.

⁵⁷ Arizona, Alabama, California, the District of Columbia, Florida, Georgia, Idaho, Indiana, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Mexico, New York, North Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

⁵⁸ OCSE’s FY 2004 Annual Report to Congress does not have a table providing the paternity performance measure for each state, as does the OCSE FY 2005 Preliminary Data Report and FY 2006 Preliminary Data Report.

⁵⁹ See *Performance Audit of the Paternity and Child Support Order Establishment Administered by the Department of Health and Rehabilitative Services*, Report No. 12002, January 1993.

⁶⁰ Florida Department of Revenue, Administrative Establishment of Support Obligations Implementation Report, June 30, 2002.

⁶¹ “Over 68% of the administrative test group achieved an order in an average of 67 days. Only 49% of the judicial control group reached an order in an average of 97 days.” *Id.*, Executive Summary.

⁶² Child Support Enforcement Program, An Evaluation of the Statewide Administrative Support Order Establishment Procedure, July 2004.

⁶³ OPPAGA, Report No.06-63, September 2006.

⁶⁴ HHS Office of Inspector General, “Review of States’ License Suspension Processes,” (A-01-96-02502) July 2, 1997. The OIG studied Maine (administrative) and Vermont (judicial).

⁶⁵ Mo. Rev. Stat. tit. 30, § 454.490.

⁶⁶ Vt. Stat. Ann. tit. 4, § 464.

⁶⁷ §2361

⁶⁸ Mont. Code Ann. § 40-5-233(5)

⁶⁹ Montana Administrative Rule 37.62.919.

⁷⁰ This is the one recommendation that was made by every person interviewed for this white paper.